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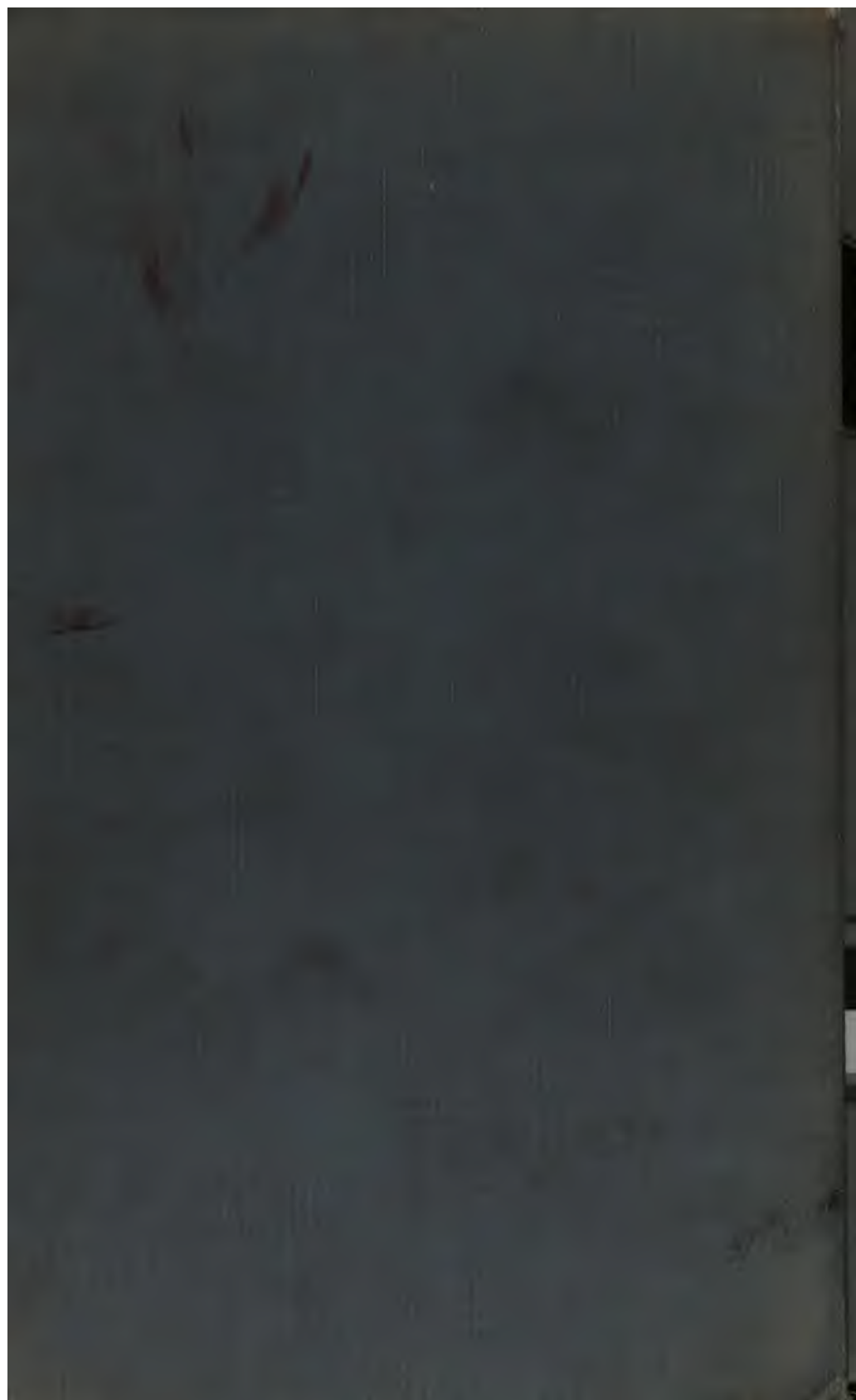
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THE

HAVANA ICE-HOUSE

CONTROVERSY



THE

HAVANA ICE-HOUSE CONTROVERSY:

OR

FACTS *versus* FALSEHOOD,

IN REGARD TO TRANSACTIONS BETWEEN

FREDERIC TUDOR AND JOHN W. DAMON.

BOSTON:

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INTRODUCTORY NOTICE.

MOST of our countrymen having business with Havana, and many who are nowise connected with the place, have heard of the ICE-HOUSE CONTROVERSY, in which a distinguished gentleman of Boston has been involved, through the ingratitude and treachery of a man of no note, an obscure mechanic, who, owing his fortune to the generous confidence and liberality of that distinguished gentleman, had made the same return that Æsop tells us the viper did, when he struck his fangs into the bosom by which he had been warmed into life.

The distinguished gentleman is FREDERIC TUDOR, Esq., of Boston, who, to the personal superiority of birth and education, which confers so many advantages in a contention of this sort, unites the many other advantages flowing from a numerous family connection and a large circle of influential friends in the higher walks of life. The ingrate who is said to have thus requited Mr. Tudor's generosity, bears the obscure name of JOHN W. DAMON, which, whatever may be deemed its claims to respect among those who know him, can scarcely be expected to carry with it, into circles to which he is estranged, any weight against the representations of Mr. Tudor, his family and his friends.

But, fortunately for the cause of Justice, the voice of **TRUTH** can receive from the **PRESS** a force which, bearing down all obstacles, makes it heard and respected even in regions where otherwise it could not penetrate. In the belief that this will happen in the present case, the following **STATEMENT OF FACTS** is put into the shape requisite to becoming generally known.

It is *founded* entirely upon extracts from Mr. Tudor's own letters, and other documents in his handwriting. And these materials will be seen not only to establish their own authenticity, but to be of a nature to establish also the truth of the narrative by which they are connected.

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THE HAVANA ICE-HOUSE CONTROVERSY.

CHAPTER I.

STATEMENT OF THE CASE NOW PENDING BETWEEN MR. TUDOR AND MYSELF.—NECESSITY FOR RECURRING TO THE PARTNERSHIP FORMERLY EXISTING BETWEEN US.

ON the 23d day of August, 1838, a public contract (*a*) was entered into by me (JOHN W. DAMON) with the *Ayuntamiento* (City Council) of Havana; whereby, upon the terms and conditions therein set forth, I acquired, for the term of ten years from the 1st of January, 1839, the exclusive privilege of supplying said city with ice.

MR. FREDERIC TUDOR, of Boston, has advanced a claim to be considered my partner in said contract, as the owner of an interest of *four fifths* of the same.

Such is the nature of the legal controversy now pending between us; and the only point presented by it is, the simple question: *whether said Tudor is, or is not, a partner in said contract.*

It requires but little knowledge of the principles of law, to perceive, that the decision of this question cannot, legally, any more than by the rules of logic and the dictates of common sense,—in any manner depend upon any partnership which may formerly have existed between the same parties, nor upon the line of conduct which may have been pursued by either of them towards the other. Neither can it depend upon the question, whether, in obtaining said contract for myself alone, to the exclusion of said Tudor, I did or did not fulfil the obligations

(a) See Appendix (A.)

of good faith towards him. Let it be supposed, that, in the association formerly existing between us, Mr. Tudor had been defrauded by me to ever so great an amount. Add to this supposition the further supposition, that, in obtaining said contract for myself alone, I had abused the confidence of Mr. Tudor, and acted towards him with the utmost ill faith. Still, it would be an incontrovertible truth, that these facts, or any possible facts of this nature, however strong and however flagrant they might be against me, could not have any proper connection with the question just stated. They might be of a nature to subject me, before the Tribunal of Public Opinion, to the severest reprobation; and before the Tribunals of Law, to the most condign personal punishment, and the most onerous pecuniary retribution in favor of Mr. Tudor, still they could not affect the question, whether that individual is, or is not, a partner in a certain Public Contract, entered into under all the formalities prescribed by law, with the *Ayuntamiento* of Havana. To this question, they would be altogether irrelevant and inapposite.

This incontrovertible truth is apparently too simple and obvious to be overlooked. Unfortunately, however, for the cause of justice, the case now pending between us has not been permitted to remain in the state proper to its true nature. This was too simple to allow scope for those misrepresentations, upon the vague and undefined influence of which Mr. Tudor could alone build any hope of sympathy from men of probity, or any hope of success to his cause. No advocate retained to maintain that cause, could fail to see at a glance, the impossibility of sustaining a pretension so unfounded and so preposterous, if presented in its own naked shape, and made to rest upon its own naked merits. Hence the necessity, on his part, of complicating and confusing the subject, until the true nature of the case should be merged and buried out of sight, in a mass of matter altogether foreign to it. For this purpose has the history of the anterior relations between Mr. Tudor and myself been resorted to, and ransacked for incidents calculated to awaken sympathy in his favor; to produce the impression that he has been a wronged and injured man; that but for ill faith on my part, he *would have been* a partner in the contract; and that, consequently, viewed in the light of natural justice, his is the right side of the controversy. A picture has been presented of a generous and magnanimous patron, belonging to the higher order of society, taking by the hand an obscure mechanic, "a poor miserable carpenter," befriending him, confiding in him, and thereby raising him from his native insignificance and poverty, to importance and wealth; and after thus proving his benefactor, experiencing at his hands ingratitude, treachery and fraud.

Such is the picture that has been presented, to supply the place of argument appropriate to the nature of the case; because the nature of the case was such as to preclude the possibility of any thing in the shape of a fair, open and direct argument in support of the affirmative of the question. Such is the purpose for which subjects entirely irrelevant to the case, have been introduced; and the history of my previous association with Mr. Tudor, and the alleged demerits of my conduct towards him, have been substituted for the simple point which presented itself for discussion and decision.

This course on the part of Mr. Tudor and his advocates, has imposed upon me the necessity of meeting them on their own ground. True, it is as little in my power as in theirs, to change the essential nature of the case now pending between us; or to make its decision turn upon the truth or the falsity of their representations respecting the conduct observed by me towards Mr. Tudor, or upon any other irrelevant matter. The law, — framed, as it is, in accordance with the dictates of reason and common sense, — pronounces those representations to be irrelevant to the case; and that, whether true or false, they cannot influence the decision of the case. It is not in my power to control the laws, and to say, that upon these matters, irrelevant though they be, the decision shall be made to turn. Nevertheless, though I cannot substitute the truth or the falsity of these representations for those points upon which the law has predetermined that the case shall turn, I can meet my antagonist on his own ground. I, too, can recur to the past relations between Mr. Tudor and myself. In the place of those *fictions*, by which he has sought to divert the course of law and justice, by exciting antipathy against me, and sympathy in behalf of himself, I can, and I will, give the *truth*. This will have the power to confound, if not to silence, him. This will show, that so far from his having any ground for complaining of fraud or ingratitude at my hands, the ground for such complaint lies entirely on my side. This will show that I have acted towards him with the utmost forbearance and delicacy; with forbearance carried to the very last extreme, under every possible provocation from arrogance and injustice. It will belong to the reader to judge, whether, so far as Mr. Tudor's interests have suffered, they have not been made to suffer by himself, and no one else; whether the effect was not inevitable, and whether this effect can be traced to any other cause than his own inordinate selfishness and despotic temper; to any other cause than qualities in himself, precipitating him into a course of injustice, duplicity and treachery, as well as a career of wanton and senseless litigation; some of his steps in which could be

dictated by sheer malice and vindictiveness alone, so remote and so uncertain was their bearing upon the only beneficial result he could promise himself from any part of the proceeding — that of intimidating or harrassing me into the surrender of my property and my rights, at his dictation.

CHAPTER II.

HISTORY OF THE FORMER PARTNERSHIP BETWEEN MR. TUDOR AND MYSELF.

§ 1. — 1821 – 23. — *Antecedent relations between us.*

THE Partnership by which it has been the mutual misfortune of Mr. Tudor and myself to be connected, as owners of the Havana Ice House, and purveyors of ice to that city, began in the year 1824.

For some years previously, I had been in his employ at various places and in various capacities, — beginning with that of carpenter, — relating to the ice business, which he is known to have established and successfully prosecuted in many parts of the world.

Among those places was the city of Havana; from the authorities of which he had, early in the present century, if I mistake not, obtained a Privilege for the introduction of ice; and this business having been broken up by the war of 1812–15, between the United States and Great Britain, it had, two or three years after the restoration of peace, been resumed under a new Privilege; in connection with which, he had obtained from the same authorities permission to erect a building upon public ground in the Plaza San Francisco, on the express condition that it should be demolished and removed by him whensoever this should be required by them.

At the close of the year 1821, — as is shown by Mr. Tudor's letter to me of the 14th December, 1821, — I was selected by him as his agent, to proceed to Havana and take charge of the ice-house; the compensation fixed for my services being "*ten per cent. upon the gross sales of ice.*"

§ 2.—1823.— *Partnership proposed by Mr. Tudor. Terms of his proposal examined. Points established by them.*

In May, 1823, Mr. Tudor, being then at Havana, proposed to me to become his partner, upon the terms set forth in a document (see Appendix B) which I yet possess, in his handwriting, bearing date May 5, 1823, and headed, "*Memorandum of Proposal to Mr. J. W. Damon.*"

This document is, as will be seen in the sequel, of great value. It is fraught with conclusive proofs in regard to the nature and terms of the understanding and agreement, upon which I afterwards became Mr. Tudor's partner; proofs which preclude all doubt respecting the injustice of the attempt made by him at a long subsequent period, and respecting the falsity of the ground assumed by him in regard to the nature of the rights acquired by me in acceding to his urgent wishes.

I will here extract a part of it: "I will sell one tenth of the ice-house, and rights appurtenant, for \$3000, payable in 1, 2, and 3 years, with interest. The sale to be made the 1st of January next, say when you are in Boston. Or I will contract to sell you the same share for one dollar at the end of the term proposed below, together with another tenth for three thousand dollars, if you are willing to return here, [Havana] conducting the business *as at present*, and remain here two years and a half, that is to say, three summers. You will then have one fifth of the concern for \$3000 paid.

' It is understood, when a partner in the concern, you are to undertake *to look after the business*; and, *when* it shall be *necessary*, to come here. [Havana.] Although you would, perhaps, do this for your own interest, it is necessary to me that it should be agreed for.

" After you have accomplished the time which I am desirous you should remain here, you are, in your *occasional* visits, to be allowed say \$2 a day, during your absence from Boston on the business.

" At the termination of the present year, you will be better able to know what the business will, in all probability, amount to, and I make the proposition to you absolutely, and give you the offer of accepting it, until the 1st of January next.

" It is my wish to keep you here in good pay, for some time, (aa)

(aa) Considered apart from the rest of the proposal, this would seem to imply, that my right to be employed. "conducting the business as at present," was to be limited to "some time;" which words refer, of course, to the term before specified. This interpretation is, however, precluded by the context. That proves the mean-

and not asking you to run risks, but making you the one dollar offer and the further right of purchase at the termination of the 3 summers for \$3000 to complete your fifth interest, although it may be worth more. If it is worth less, you are not bound to take it.

"By a steady conduct of the business, with a uniformity of supply, you will know what the business ought to be; and the agent who may be subsequently appointed be checked by the records of five years which will be known to be correct.

"It is no object to me to sell, unless all the personal attention which may be necessary *here*, [at Havana,] shall be given by the purchaser, with an allowance as above stated, for his expenses. To be relieved from personal attention to the business, particularly *here*, is very desirable to me.

"The present house is guaranteed to stand against being removed by the authorities of the place, for three years; (b) and the new house to be built at the expense of my four-fifths; your fifth, instead of paying, is to be made up by your attention to the erection, and the concern charged with the \$2, unless you are here selling ice as at present."

Mr. Tudor winds up by saying, "Should you return home in December with a view of coming out here again, I am willing to be charged two doubloons if you come by the way of Baltimore or Philadelphia, rather than by the way of Cape Cod in that stormy season."

This shows how solicitous Mr. Tudor was about my personal safety, in the event of my leaving Havana, "at that stormy season," *with an intention of continuing in his service, or of becoming his partner*. The previous extracts serve to establish points which Mr. Tudor's subsequent course renders it necessary

ing of the present passage to be, *not* that my right in this respect was to be so restricted, but that Mr. Tudor would be *satisfied* with securing my services for the period named by him. This was all that he *asked* in exchange for what he offered to *give*; and beyond that period, my continuance in the post was to be optional with *me* alone.

It will be seen in the sequel, that he attempted to reverse the matter in *both* respects; by asserting that, agreeably to what he had "all along understood," he had an absolute right to deprive me of the employment at any moment he might see fit, whilst I was bound to reside at Havana so long as he might please so to "order."

(b) What *right* he had to give any such guarantee, and how far it was effectual to secure my peace and quiet, will appear in the sequel. It will be seen that the only ground which his guarantee had to rest upon, was in his doctrine, that, "in a Spanish country, possession is *more* than nine points in the law," and that although he had no right, (and was under a solemn engagement to remove, so soon as the authorities should give the word,) it would require the whole power of the King of Spain to dispossess him in less than six years! And this doctrine I was "instructed" to enforce!! [For the letter in which this doctrine is particularly set forth, see § 8.]

that the reader's attention should be specially called to. It is seen, that,

1. *First.* Mr. Tudor here proposes to "sell *one tenth* of the ice-house and rights appurtenant, for \$3000, payable in 1, 2, and 3 years with interest; the sale to be made on the 1st of January, 1824." The only stipulation on my part required by him is, that, "when a partner in the concern," I should look after the business; and, for the purpose of doing so, *visit Havana when* this should be *necessary*.

2. *Secondly.* Mr. Tudor makes another proposal, to wit: that, if I should be "willing to return here, [Havana] conducting the business as at present, and remain here two years and a half, that is to say, three summers," he would bind himself by contract, to sell me, at the expiration of that term, *one tenth* for one dollar, and another *tenth* for \$3000.

"Conducting the business *as at present*," meant, *at the compensation of ten per cent. upon the gross sales*, which had been fixed in 1821, and had continued ever since. Here, then, Mr. Tudor offers, that if I would continue at Havana in his service during "three summers" more, my compensation for so doing should be, not only the ten per cent. upon the gross sales which I was then receiving, but, in addition thereto, the ownership of "one tenth of the ice-house, and rights and appurtenances." This is what he was willing to bind himself to sell me "*for one dollar*," in other words, to *give* me, at the end of the two years and a half. Moreover, as a further inducement still, to pass these three summers at Havana in his service, and as a further compensation for so doing, it was to be optional with me, at the expiration of the term, to purchase or not, at my pleasure, another tenth of Mr. Tudor's "ice-house, rights and appurtenances," for the sum of \$3000. He would bind himself to sell it for this sum, however great its value might by that time have become; whilst, on the other hand, should it be worth less, I was not to be "bound to take it."

In regard to this second offer, as in regard to the first, the only stipulation on my part, required by him is, that, when a partner in the concern, I should look after the business; and, for this purpose, *visit Havana when necessary*.

It is to be observed, that by the words "*when a partner in the concern*," nothing else could be meant by Mr. Tudor, nor understood by me, than this, to wit: *when the sale which Mr. Tudor proposed to make, should have taken place*, supposing his *first* offer to be accepted by me, then the sale was "to be made on the first of January next," [1824.] Supposing his *second* offer to be the one accepted by me, then he was immediately to

"contract to sell;" and the sale itself was to take place at the expiration of the term of two years and a half. In either case, so soon as the sale should be effected, Mr. Tudor would have *ceased* to be the *owner* of the share sold by him in "the ice-house and rights and appurtenances;" and I being the purchaser, would have *become* the *owner*. And he remaining the owner of one part, [four-fifths] whilst I had become the owner of the other part, [one fifth] I would necessarily be, *ipso facto*, "a partner in the concern."

It is to be observed also, that the stipulation requiring me to *reside* at Havana had no application to the time when I should have become "a partner in the concern." My residence at Havana for the "three summers" was the consideration, which, in the event of my accepting the second offer, was to be given by me in payment of *one* of those *two* tenths, the other of which was to be paid for in money; and under this one of the two proposed arrangements, I was not to become a partner until after this term of residence should have expired. Agreeably to the first of the two proposed arrangements, I was to become a partner "on the 1st of January next." In neither case was I, after becoming a partner, to be under any obligations to *reside* at Havana; I was *merely* to *visit* it "when necessary." (bb.)

3. *Thirdly*. As a further inducement to me to accept his proposal, Mr. Tudor offers to guarantee that there shall be no necessity to procure a new site for carrying on the business until the expiration of three years.

4. *Fourthly*. And finally, as another inducement yet, he engages that, if I will consent to become proprietor of *one fifth* of the concern, the new house shall be built at his sole charge, as owner of the remaining *four fifths*; the personal "attention to the erection," which I was to give, being considered as an equivalent for the contribution to which my one fifth would otherwise be subject. (c)

(bb) It may perhaps occasion surprise, that so many words should be bestowed upon points, in themselves so perfectly obvious. This surprise will, however, cease, or at least receive a new direction, when the reader is informed of the fact, that, abusing the reliance placed by me in his good faith, in permitting him to write the document whereby this proposal was carried into effect, and I became his partner, Mr. Tudor, at a subsequent period, (in 1835,) denied my ownership of any part of the concern; maintaining that my interest of one fifth depended entirely on my continued residence at Havana; or, as he expressed it, was "*essentially founded on your residence in Havana*;" that I was bound, on penalty of its instant forfeiture, to continue to reside there as long as he might choose, whether it should or should not please him to "give" me the post of ice-house keeper, or whether it should or should not suit me to hold it, on such terms of compensation as he might please to fix!

(c) Such was the obligation contracted by Mr. Tudor, when intent upon inducing me to become his partner. *After* this object had been secured, as will be seen in

5. *Fifthly*. Though evidently anxious to secure my constant personal attendance at Havana, as deemed by him highly important to his interests, Mr. Tudor limits his requirement in this respect to the term of two years and a half. It was for this term of residence, that he proposed to compensate me by selling me a *one tenth* interest for one dollar, besides allowing me the ten per cent. upon the gross sales during that term, and engaging to exempt my share in the concern from all pecuniary charge for the erection of the new house, which was to be our common property in the proportion of four fifths, and one fifth. After this term of residence should be fulfilled, I was to be at liberty to reside at Boston, or wherever I liked. After that, I was to be bound only to *visit* Havana when it should be *necessary* to give to the business there that *personal attention*, from the burthen of which, Mr. Tudor wished to be relieved; and, in these "*occasional visits*," I was "to be allowed, say two dollars a day during your [my] absence from Boston on the business."

But, although Mr. Tudor did not *require* me to reside at Havana for a longer period than the two years and a half, the same motives which prompted him to offer me the inducements held out as my compensation for that limited residence, — these same motives existed for his *wishing* that I should continue to reside at Havana after that period. This wish *was entertained and expressed by him*. And, suppose that it should be acceded to by me; suppose, that, at the expiration of this limited period, I should be willing to prolong my residence at Havana indefinitely, in charge of our joint property and business; what was then to be the compensation for my services? This question finds an answer in the passage of Mr. Tudor's proposal just under consideration; that which relates to the building of the new house.

It is to be observed, that he here guarantees that there shall be no necessity for a new house until *after the expiration* of the "three summers" for which I was to engage to reside at Havana. When the new house should be constructing, I was to give my "attention to the erection," in lieu of that contribution in money which would otherwise be due from me as the owner of one undivided fifth of the establishment. But was the compensation for my services, previously stipulated for, to continue during the

the sequel, and *after* "the new house to be built," had been built, and not only my "attention," but the work of my hands, given "to the erection;" when all this was past and done, Mr. Tudor insisted that the expense should *not* be charged to his four fifths, but to the whole concern, including my one fifth! And in this instance, as in others of the same kind, he carried his point, through my strong repugnance to have recourse to that remedy which, on occasions of the sort, was pointed out to me by the phrase, "the courts are open."

time I should be thus giving my "attention to the erection?" Mr. Tudor engages that it should continue; and this engagement is so expressed by him as to afford an answer to the question which now occupies us. He says, that during the period that the house should be building, "the concern" should be "charged with the two dollars, *unless you are here selling ice as at present.*" That is to say, if, at that future time, I should have ceased to *reside* at Havana, then and in that case, I was to repair to Havana for the purpose of superintending the erection of the new house, and whilst so engaged I should receive the *per diem* allowance of two dollars, previously mentioned in Mr. Tudor's memorandum. But, if my residence at Havana should *not* then have ceased, in this event I would still be "here, selling ice, *as at present;*" in other words, *at the compensation of ten per cent. upon the gross sales.*

Although the document contains no formal stipulation upon this point, we here see, therefore, proof in regard to the *wishes and intentions* of Mr. Tudor, and the *assurance held out to me* by him. He did not *require* me to reside at Havana longer than the two years and a half; but, if at the expiration of that period, I should be willing to continue to reside there, he would ask nothing better than that I should so continue on the same terms "*as at present,*" receiving for my compensation the "*ten per cent. upon the gross sales of ice.*"

It is true that this assurance was not given with reference to any determinate period. Mr. Tudor did not expressly stipulate that this rate of compensation should continue all my life, or so long as I might continue disposed to reside at Havana. But neither did he fix any limit to its duration. And, taking every thing into consideration, the anxiety so strongly evinced by Mr. Tudor to secure my services, and particularly to induce me to become his partner; the gift of one tenth part of the concern, and the exemption of my share from all charge for the cost of the new house,—both of which were held out to me as inducements, *over and above* the compensation of ten per cent. on the gross sales, to agree to reside at Havana merely for three summers,—taking all this into consideration, no candid person will, I think, feel inclined to dispute, that the mode in which this assurance from Mr Tudor was understood by me was the mode in which I had a right to understand it, and in which it would naturally be understood by every one, to wit: that, unless something altogether unforeseen and extraordinary indeed should happen; unless the nature of the business, or of its profits and results, should become in a most remarkable degree different from what it then was, or could then be anticipated to become; unless this ground for a change

should occur, *the ten per cent. compensation was secured to me so long as I should be willing to reside at Havana, in charge of the business.*

6. *Sixthly.* The interest here proposed to me by Mr. Tudor is not merely in "the ice house, and rights appurtenant," actually existing and possessed by him at that time; but it is *prospective*, and embraces a share in all *rights* arising from any *future renewal* of the Privilege, and in the *appurtenances and property*, "new house" and all, to be connected therewith. The interest which he wishes me to purchase is a *PERMANENT* interest; to endure so long as he might continue to hold the Privilege; or, should he fail to obtain its renewal, then, so long as he might continue to be engaged in the ice business at Havana. Just so long as he should have the *right* to carry on that business, and the *ability and disposition* to do so, just so long was a share in his right and his business and the appurtenances (including the "new house") to be *MINE*.

This results necessarily from the very nature of the proposal, when considered with reference to the nature of the business and property to which it relates. It is directly proved by the terms in which the proposal is expressed, and most particularly and irrefragably proved by certain parts of the proposal.

Take, for instance, that part which relates to the building of the "new house." Mr. Tudor offers to guarantee that we shall not be disturbed in the occupancy of the existing house *for the space of three years*. It was not until *after* this period, that the new house was to be built, or, at any rate, was to come into use. Now, without entering here into the question how long his existing Privilege (*d*) might then have yet to run, it is evident that unless the unexpired portion of it was very considerable indeed, he could not have thought of incurring all the trouble and expense of building a new house, *except with a view to continue the business after the term of the existing Privilege should have expired*. On any other supposition, of what use would the new house be to *him*? or how could it be an object to *me* to own one fifth of it?

(*d*) Not to complicate the subject, I speak here as if Mr. Tudor, at that time, really possessed a Privilege. This was my belief at the time. The truth of the matter, as will hereafter be seen, is, that he had *no* Privilege. This *existing* Privilege, which Mr Tudor sold me a share of in 1824, was *non-existent*. It will also be seen in the sequel, that, in the face of this fact, and of the entire tenor of his own proposal, Mr. Tudor, some years afterwards, (in December 1830,) actually had the conscience to threaten me with litigation upon the point now under consideration: saying, that it should "be determined by the lawyers," whether, "at the end of the old contract with the Government," (a contract which *had actually expired*—although he left me to find this out for myself afterwards—*before our connection commenced*) he was not at liberty to say, that our connection was terminated, and I no longer had any interest in the concern!

Again, on comparing Mr. Tudor's two offers, it is seen that by the one he proposes to sell *one tenth* on the 1st of January, 1824, for the sum of \$3000; and by the other, to sell that same share, *three years after* the 1st of January, 1824, for the same sum of \$3000. Now, this valuation of the same share at the same price, in 1824 and in 1827, (when the existing Privilege would have three years less to run) is manifestly inexplicable on any other supposition than this, to wit: that it was Mr. Tudor's expectation to obtain a renewal of the Privilege when it should expire, or his intention to continue the business, whether he obtained the renewal or not; and that the interest which he proposed to sell me was a *permanent* interest, embracing all future rights, &c., as well as those then existing.

§ 3. — 1824. — *Partnership formed with Mr. Tudor. The Bill of Sale and Contract, conveying to me one fifth part of the ice-house &c., is written by him. — Bearing of this fact upon his conduct afterwards, in attempting to avail himself of the alleged worthlessness of this Document. — The tenor of the Document examined, and its meaning ascertained, with reference to Mr. Tudor's subsequent pretensions. — Fact, that the Privilege, of which he sold me a part, had no existence.*

PARTNERSHIP FORMED. Mr Tudor's proposal bears date early in May, 1823, and allowed me "until the first of January next," — that is to say, eight months' additional experience of the nature and value of the business, — to come to a decision. So little ambitious was I of the honor of becoming his partner, that I permitted this long term to expire without availing myself of his offer. After its expiration, as is shown by the memorandum written by Mr. Tudor's hand at the foot of his original proposal it was renewed by him and again declined by me. A few days after, however, in an evil hour for me, I finally allowed myself to be persuaded into a step which, times without number, he has given me cause to regret most sincerely. On the 29th of January, 1824, we became partners; and my little fortune became so bound up with the fitful capriciousness; the domineering, dictatorial, contumelious spirit; the reckless injustice, and the wanton vindictiveness of Mr. Frederic Tudor, as to place me for the better part of my life under the necessity of bearing the trials to which these qualities subjected me, as the only alternative to abandoning to his greed the property earned by the sweat of my brow, and saved by my frugality, that frugality which, congenial to my character, but contrasting with the princely expenditure appropriate to his, was once made by him the

subject of friendly remonstrance, in the shape of the condescending remark, "Damon, you do n't spend enough."

Having made up my mind to become his partner, I preferred to become such absolutely, and at once, by the present definitive purchase of that *one fifth* share which he had proposed to me to acquire by paying for it, partly by the two years and a half residence at Havana, and partly in money at the expiration of that term. In other words, I accepted his *first* offer; with the modification merely of purchasing one *fifth* instead of one *tenth*, and paying \$6000 instead of \$3000. This, it is to be observed, *left me free in regard to my residence at Havana*. On referring to the foregoing examination (§ 2) of the terms of Mr. Tudor's proposal, it will be seen, that my obligation to *reside* at Havana was to exist only in case of my binding myself to render my services for "three summers," in payment of one half of my fifth part. By paying for the entire fifth part in money, (\$6000, instead of the proposed \$3000,) I remained free to *reside* at Havana only so long as it might suit me so to do, the only thing obligatory upon me in this respect being, that "when necessary" I should *visit* Havana, for the purpose of looking after the business, with the conduct of which at Boston Mr. Tudor charged himself.

BILL OF SALE. — The arrangement being completed by the payment of my money for a part of the sum, and the giving of my promissory note for the balance, it followed, as a matter of course, that I should receive in return, some evidence of the rights acquired by me; some written proof that I had become interested in the business and property, as the owner of one fifth part, and entitled to the administration at the ten per cent. compensation.

And here, Mr. Tudor's superiority in point of education came into play. Being nothing but a "poor miserable carpenter," — a fact since adduced to the Tribunals on behalf of Mr. Tudor, in proof of the justice of the allegation that the property now possessed by me must be due, not to the industry and frugality to which he *knows* it to be due, but to a course of treachery and fraud by which he has been the sufferer, — being at that time nothing but a "poor miserable carpenter," my hand was necessarily more familiar with the saw and plane than expert with the scholar's implement, — the pen, — or conversant with the tricks of the law and the niceties of legal conveyances; and the task of drawing up the document which was to serve as proof of the transaction between us naturally devolved on the hand of Mr. Tudor. The understanding and agreement between us was perfectly clear and explicit, and I had no distrust whatever of Mr. Tudor's rectitude

and fair dealing. I took for granted that the instrument written by him was, — as it seemed to me to be, — sufficient for every purpose ; and it was signed and exchanged between us, without a thought on my part that any mischief could ever grow out of the confidence thus reposed in him. The idea did not enter my head, that this document could ever give rise to questions as to its meaning ; or, supposing it should leave room for such questions, that Mr. Tudor was capable of desiring to take advantage of anything of the sort.

This document will be found in the Appendix, (B. B.) In the eye of those skilled in the law, (which, by the way, Mr. Tudor, at a subsequent period, tauntingly told me “is a very different thing from *equity*,”) in the eye, then, of those skilled in the *law*, as contradistinguished from *equity*, it may, — as Mr. Tudor has since maintained that it does, — amount to *nothing at all* ; it may secure to me neither the ownership of the fifth part sold to me, nor that right to the custody and care and management of the property, on the strength of the assurance of which I consented to become a purchaser. In a word, it may in all respects leave me entirely at the mercy of his generosity and magnanimity. If this really be its character, I can only point to the document entitled “Memorandum of Proposal to Mr. John W. Damon,” and, having done so call upon Mr. Tudor’s generosity and magnanimity, his justice and veracity, all combined, to testify to the point, whether this supposed worthlessness of my Title-Deed was the result of design on his part, at the time it was drawn up by his pen ; or whether it is only of late years that he has become conscious of it and has intended to avail himself of it. Let him depose and say, whether, at the time of drawing it up, he inwardly intended that it should *not* carry into effect the agreement between us, founded on his own written proposal ; or whether its alleged inefficacy for any such purpose be a comparatively modern discovery of his or his lawyer’s, and the design to avail himself of it a design growing out of that discovery.

Upon *this* point, he, of all men living, has the best right to speak. Upon *this* point, *his* testimony alone is worth more than the combined testimony of all men living besides. To him, therefore, does it belong, — emphatically belong, to decide it.

Not so, however, in regard to that alleged worthlessness of the Title-Deed written by Mr. Tudor, which was subsequently supported by him, and asserted by him, to leave me entirely at his mercy. This is a point upon which his testimony is worthless, absolutely worthless. The Title-Deed must speak for itself, and if it leave room for doubt, other sources of evidence than Mr. Tudor’s words, — *unless, indeed they operate against himself,* —

must be had recourse to. Fortunately, however, this Title-Deed, is in all points save one, a very good document in itself; nay, a perfect document: for, save in that one point, it is sufficiently clear and explicit to preclude all doubt respecting the true terms of our agreement, and therefore to answer all the substantial ends of justice. And even for this one defective point, a remedy is afforded by letters subsequently written by Mr. Tudor; so that there is no necessity for appealing to his previous "Memorandum of Proposal."

ITS TERMS EXAMINED. The present document is seen to read as follows:

"In consideration of six thousand dollars paid to me by John W. Damon by his note of hand and money, I DO HEREBY SELL to him one fifth part of the ice-house and its appurtenances, together with the like proportion in any privilege from the Government of Havana, where the ice-house is situated; this interest commencing on the first of January, 1824."

Next comes the following qualification and stipulation:

"This sale does not extend to heirs or assigns; but in case of any misfortune, whereby said J. W. Damon cannot render any aid to the concern, then any money paid by him for the said fifth may be refunded to his representative by F. Tudor, the grantor, or his heirs; but not in case J. W. Damon should remain in good health."

What is the precise meaning of all this? Its meaning is,

First. That this is not to be understood to be an *absolute* sale, giving to said Damon a right to assign or sell his fifth part, or to his heirs a right to succeed thereto.

But, is this qualification made *absolutely*? Is it made without reference to possible contingencies and without provision for those contingencies? Suppose, for instance, that said Damon should by loss of health, be incapacitated from giving any attention to the business; is he, even in such case, to be precluded from selling his interest? Or suppose him to die the very next day after the purchase; are his heirs to lose even the money he has paid for it?

Not at all. No such absurdity as this was ever consented to by said Damon, nor (at *that* time) ever intimated by said Tudor. No such absurdity is expressed in the document. Nor is it even left to be implied, as might have been the case, had it merely said, "This sale does not extend to heirs or assigns." The document expressly precludes any such implication, by providing expressly for both cases. It says,

Secondly. That, in either case, it shall be optional with said "Tudor or his heirs," (they "MAY,") to *refund* "any money paid

by" said Damon. This expression, "*any money paid*," having reference to the fact, that *all* the six thousand dollars had not been paid down, but a part of it was yet to be paid, and might still remain unpaid when said contingencies should have occurred.

To whom is this money to be refunded? It is to be refunded to the "*representative*" of said Damon. This word applies indifferently to *assigns* or to *heirs*; and the stipulation, therefore, embraces both cases.

But why is it left optional with said "Tudor or his heirs" to refund the money? Why is it thus expressly stipulated that the money "*may be refunded*" by them? Is it because,—supposing Damon's fifth part to lapse to them absolutely by the event of his death or other misfortune, they would not have been at perfect liberty to *indulge their generosity* by refunding said money; and this stipulation was necessary to give them that liberty? We must either adopt this absurd reason, or we must adopt the only one which remains, to wit: that the stipulation has this meaning, and no other, that it should be optional with "Tudor or his heirs" to refund the money, or *let Damon's fifth part go to his heirs or his assigns*, as the case might be. In other words, in the event of the death of Damon, or of his inability "to render any aid to the concern," *they should have the right to purchase it back at the price which he had paid*.

Next, come those words that have been referred to as the only part of the document which leaves room for doubt in regard to the precise nature of the agreement of which it is the expression. The above passage says,

Thirdly. "But not in case J. W. Damon should remain in good health." What does this mean? To what does this word "*not*" refer? What is it that was *not* to be, in case Damon should preserve his health? This is a question that can be settled only by referring to what precedes, and applying the present negative stipulation to all those which from their nature are susceptible of being controlled by it. By pursuing this course, we arrive at the conclusion that this part of the contract means:

In the *first* place, in favor of Tudor: That if Damon preserves his health, he shall not have it in his power to force upon Tudor or his heirs the alternative of refunding the money or admitting a new partner as the purchaser of his (Damon's) part. That is to say, that the expression "any misfortune whereby said Damon cannot render any aid to the concern" shall not be considered as meaning all possible misfortunes attended with such effect, but solely his *death*, or the *loss of his health*. In these two cases *alone*, shall Tudor or his heirs be under the alternative obligation

to refund the money, or admit as a new partner the heir of Damon or the person to whom he may sell his part. No matter what misfortune may happen to Damon, rendering it impossible for him to "render any aid to the concern," this misfortune shall not, if he "remain in good health," give him any right to say to Tudor or his heirs, "you must pay me back my money, or allow me to sell my part to some one else." So long as he shall retain his health, he cannot sell his part except by the free consent of Tudor or his heirs; he must retain it.

In the *second* place, in favor of Damon: that so long as he shall live, absolute inability, through loss of his health, to "render *any* aid to the concern," shall be the only thing which shall give to Tudor or his heirs the right to say to him, "We will refund you your money and resume the part sold to you." He must be incapacitated by ill health to render *any* aid to the concern, before the right just reserved to them, to refund his money and resume his share, shall exist. No dissatisfaction on their part, no alleged ground of complaint regarding mismanagement by him, or regarding the insufficiency of the aid rendered by him, shall be sufficient to give them the right to deprive him of his share as a partner, even on refunding his money.

That this was the true meaning of our agreement, so far as regards this point, is proved by a letter written by Mr. Tudor only a few months after, (May 14th, 1824.) In this letter, after complaining that my attention was given to other matters, and that the business of the ice-house was greatly neglected by me, he proposes that, if I was determined to persist in this course, I should relinquish my situation as ice-house keeper. And suppose me to do so, what then? Suppose me to refuse to conform to his views in regard to the degree of attention due by me to our joint business; and on this ground of disagreement, to relinquish my situation: would my share be forfeited? Would this alleged neglect, and my relinquishment of the charge of the ice-house, give him even the right to turn me out as a partner? Not at all. He says to me, — if you *will* persist in attending to other business, why do so, "*but give up your situation to another, AND RETAIN YOUR FIFTH.*" That is to say, although making bitter complaints of what he considered gross misconduct on my part, — misconduct so very gross as to justify him in calling upon me to relinquish the charge of the property and business in which I owned an interest, — yet he acknowledged my right to *retain my fifth* and continue to be his partner.

One other part of this document, — and a very important one it is, — remains to be examined:

"Mr. Damon goes to Havana, and is to charge the concern

ten per centum for his services and remittances and other necessary care of the business; the same as last year."

This, let it be remembered, is *a part of the contract*. It is not a mere memorandum, or letter from Mr. Tudor, such as I had formerly received from him, when, as his mere agent, I had gone to Havana to take charge of his business at the compensation agreed upon between us. It here *constitutes an integral part of the deed of bargain and sale*, signed by both, and exchanged between us. Formerly, when the stipulation here expressed had passed between Mr. Tudor as my employer, and me as his agent, our respective legal rights under it depended upon the law regarding that relation; with certain restrictions and qualifications, dependent upon the particular circumstances of the case, he possessed the right to cease to employ me, to withdraw from me both the employment and the compensation, at any time he saw fit; and I had a corresponding right to throw up the employment. But now, the case is different, this stipulation here stands as an integral part of that covenant whereby he had become the vender, and I had become the purchaser of a permanent interest in a particular piece of property; and our respective rights depend upon essentially different considerations and rules.

In regard to these rights, several questions present themselves.

First Question. Supposing said Damon disposed to continue at Havana in charge of the ice-house, rendering the services and receiving the compensation agreed upon, for how long a period would he have a right to do so? For how long a period would said Tudor (supposing no just ground of complaint on his part to exist) be under obligation to allow said Damon to continue in charge of the property and business and to receive the compensation?

One thing is perfectly manifest, to wit: that this part of the arrangement and bargain might have been the chief inducement on the part of Damon, to enter into it and become owner of the share purchased by him. At any rate, it must, until the contrary be made to appear, be considered as an essential part of that inducement. Consequently, *until the contrary should be made to appear*, it could *not* be optional with Tudor to set it aside at any time he might please.

But this is a *negative* merely; and the question is of a nature to require an answer in the *positive* form. It will be recollected that the point now before us has already been examined, (see § 2,) when the *fifth* point settled by Mr. Tudor's proposal was under consideration. The conclusion to which its examination there led us, if just there, must be so here. It is, *that, unless something altogether unforeseen, and very extraordinary indeed, should hap-*

pen ; unless the nature of the business, or of its profits and results, should become in a most remarkable degree different from what it then was, or could then be anticipated to become ; unless this ground should arise for qualifying the operation of this stipulation, THE CHARGE OF THE PROPERTY AND BUSINESS, WITH THE COMPENSATION SPECIFIED, WAS SECURED TO SAID DAMON SO LONG AS SAID BUSINESS SHOULD CONTINUE AND HE SHOULD CONTINUE DISPOSED TO RESIDE AT HAVANA AND COMPLY WITH HIS OBLIGATIONS.

Second Question. Supposing said Damon to become unwilling to continue to reside at Havana ; for how long a period would he be under obligation to do so, if required by said Tudor ?

Here, as in regard to the first question, it is manifest, that this obligation on the part of Damon might have been the chief inducement on the part of Tudor to sell. At any rate, it must, until the contrary be made to appear, be considered as an essential part of that inducement. Consequently, *until the contrary should be made to appear*, it could not be optional with Damon to set it aside at any time he might please.

The question then arises, *can* the contrary be made to appear ? It *can* ; and this, in several ways.

In the first place, the total silence of the document is a strong evidence of it. Had it been a part of the agreement that Damon should continue to reside at Havana so long as Tudor might require it, the latter could scarcely have omitted to stipulate expressly for a thing so important to him. The more important this right, on his part, to require Damon to reside at Havana, the greater the improbability that he would have omitted expressly to secure it and place it beyond question. Even leaving out of view the important fact, that the document was written by Tudor's own hand, its silence is far more expressive against his right to require Damon to continue at Havana, than against the right of Damon to retain charge of the business.

In the second place, there is a part of the document which, as far, perhaps, as it is possible for a negative to be proved, does prove that Damon did *not* contract any such obligation. The part alluded to, is the one already examined ; where it is stipulated, that the obligation on Tudor or his heirs, to refund the purchase-money or permit Damon to sell out his share to a third party, should not exist so long as Damon remained in good health. This stipulation, as we saw when it was under examination, is in truth, a mere qualification of a previous part of the same sentence, which, unless so qualified, would have imposed said obligation upon Tudor and his heirs "in case of *any* mis-

fortune whereby said Damon cannot render any aid to the concern." And, taking the whole together, it manifestly involves an acknowledgement, that, agreeably to what was in contemplation of the parties, Damon might, for *other* causes than the loss of health, (though this would be the only one giving him a right to sell without the consent of Tudor,) find it impossible to "render *any* aid to the concern;" in other words, find it necessary no longer to reside at Havana. This was evidently in contemplation of the parties: and yet it is seen that the contract does not provide any indemnity to Tudor, in case Damon should, at any time, declare that he "cannot render *any* aid to the concern;" — a thing which it could not have failed to do, had the agreement between the parties, of which this contract is the expression, imposed any such obligation. The only restriction upon Damon, in regard to rendering or not rendering "*any* aid to the concern," is, that unless his not doing so should arise from inability, and that inability be caused by loss of health, he would have to continue to be a partner in the business so neglected by him.

We see then, that the interests of Tudor, — so far as these might be affected by Damon's personal attention to the business, — are not left by the contract altogether without security. On the contrary, this double security is provided for them, to wit: *first*, the charge of the property, and the compensation of ten per cent. operating on Damon as *one* inducement; and, *secondly*, the necessity of continuing to be a partner, whether he remained in charge of the property or not, operating on him as a *further* inducement, both to continue at Havana, and to do all he could for their joint interests. — And containing as it does, these securities for a *disposition* on the part of Damon to continue at Havana for an indefinite period, whilst it does not contain any stipulation giving to Tudor the least shadow of right to *require* him to reside there against his will, the contract affords a double presumption, that, agreeably to the understanding and agreement between the parties, Tudor did not possess any such right, but, on the contrary, had contented himself with the double security just named.

In the *third* place, the justness of this view of the bearing of the tenor and import of the contract upon the point in question, is confirmed and put beyond doubt, by Mr. Tudor's "Memorandum of Proposal." This shows, that the utmost that he ever proposed in regard to my binding myself to reside at Havana, was, for "three summers," and that, in consideration of my binding myself to even this limited residence, he offered to *give me one tenth part of the concern*. The document now before us shows that my entire fifth part was paid for in money.

Thus, then, is it proved, that the arrangement under which I purchased that fifth part did *not* place me under any obligation to reside at Havana, but left me free to give up the charge of the establishment whenever I should see fit.

Mr. Tudor's "Memorandum of Proposal," serves to establish one point in his favor, also; a point which was never disputed by me; but which, had I entertained a disposition to contest it, he would have appealed in vain to the contract to establish. The point to which I allude is, that conformably to our understanding and agreement, although I was *not* under any obligation whatever to continue to *reside* at Havana a moment longer than it should suit me so to do, yet I *was* under the obligation "*occasionally*" to "*visit*" Havana, "when necessary." Supposing I should become unwilling to continue in the post of ice-house keeper, and that it should be *voluntarily* relinquished by me, (which supposition implies that Mr. Tudor's obligation in this respect has been faithfully observed,) I would still be bound to spare Mr. Tudor the *necessity* of visiting Havana for the purpose of giving to the business "the *personal attention* which may be *necessary* here, at Havana." This obligation I did enter into; but, as before remarked, had I felt disposed to put Mr. Tudor to the proof of it, he would not have been borne out by the contract.

PRIVILEGE NON EXISTENT. Before taking leave of this document I will call attention to the legal skill,—may be only an attempt at legal skill,—which, in one point, it evinces. It is to be observed, that Mr. Tudor so words his bill of sale as to avoid asserting positively, that he *does own* that *Privilege* in which he had induced me to buy an interest from him. He says, "I do hereby sell to him one fifth part of the ice-house and its appurtenances, together with a like proportion in *any* Privilege from the Government of Havana, where the ice-house is situated."

Now, the fact was,—as I discovered, to my cost, very soon after my return to Havana,—that he did *not* own "*any* Privilege." He had once owned one, but it had expired! Suppose, that, on making this discovery, I had returned to Boston, and called Mr. Tudor to account before one of those Courts, charged specially, as lawyers tell us, with cases of "*fraud, accident and trust.*" Would he not have been compelled to refund me my money, even although I should still "remain in good health?" Or would the Court have allowed him to take refuge behind the quibble, that his bill of sale had not contained any positive averment that he owned a Privilege; but, on the contrary, that all he had sold me was an interest in "*any* Privilege," which he might own, or might not own, as the case might, in truth, be?

§ 4. — 1824–30. — *Difficulties in which I found myself involved as Mr. Tudor's partner. — Expiration of his Privilege. — Obstacles to its renewal. — His anxiety and efforts to obtain it. — New lot for an ice-house. — Necessity for obtaining one. — Mr. Tudor's "instructions" on the subject. — His insulting deportment and baseless charges. — Management of the ice-house. — Mr. Tudor's insulting, groundless, and ever-renewing charges of neglect of duty. — His pretension to reduce my compensation. — Mission of his brother Henry. — I retire from the post of ice-house keeper in April, 1830. — Extraordinary game played by Mr. Tudor on this subject. — The charge of the ice-house temporarily resumed by me in August. — More of Mr. Tudor's self-contradictions. — New Privilege obtained, August, 1830. — More, again, of Mr. Tudor. — My position at the close of 1830. — I depart for Boston.*

DIFFICULTIES. Having thus allowed myself to be induced to become Mr. Tudor's partner, and, by linking my own interests permanently with his, to surrender the freedom I had previously enjoyed, — to sever my connection with him at any moment it might become distasteful to me, — it was not long before I was made sensible of the nature of my new position. Instead of the secure possession and enjoyment of the property and Privilege of which I had bought a share, I found that there was *no Privilege*, and that the whole "concern," — house, business, and all, — stood upon a basis so very precarious, that there was no telling at what moment it might come tumbling about my ears. Instead of having upon my hands merely the care of the property and management of the business of receiving and vending ice, in peace and quiet, I found that this constituted but a most insignificant part of the task to which I had unconsciously bound myself; and to which I was compelled for many years to remain a slave, as the only alternative to the loss of what I had paid for. In place of the employer who had been so well satisfied with my management as to put upon the value of my services the high estimate indicated by his anxiety to secure them, and by the price at which he wished to do so, I found myself bound now by the iron bands of necessity to a partner whom it was impossible to please, and upon whom the only effect produced by the proof of the utter groundlessness of one string of insulting animadversions, seemed to be to charge him for another volley of contumely; one, whose nature forbade that he should make a manly acknowledgement of error and injustice, or even allow the consciousness of it to check him in the future indul-

gence of those propensities by which he had been betrayed into them.

EXPIRATION OF MR. TUDOR'S PRIVILEGE, &c. Soon after the date of the arrangement concluded with Mr. Tudor, in the manner and terms above described, I left Boston for Havana, where I arrived on the 10th of March, 1824, in the ship *Columbus*, loaded with a cargo of ice, to which had been added some fresh fruit and other minor articles.

Upon this vessel,—as also upon the ship *Bramin*, which followed soon after, with a similar cargo,—tonnage duties were demanded at the Custom House, contrary to what had been the practice in regard to vessels bringing ice, when I had been in charge of the business as Mr. Tudor's agent. It was at first supposed that this was owing to the fact that the cargoes of these vessels did not consist solely of *ice*, the article in favor of which the exemption had been granted; and, acting upon this supposition, Mr. Tudor's mercantile correspondents at Havana took steps to obtain the remission of the duties. These, however, served only to elicit the fact stated in the following extract from my letter to Mr. Tudor, of the 21st May, 1824.

"The tonnage duty is not exacted on account of other merchandise being brought in those vessels; but, as the Collector says, *on account of the CONTRACT HAVING EXPIRED.*"

Such was the position wherein I unexpectedly found myself in this particular! "The contract having expired," a renewal of the Privilege had to be obtained, or these consequences would follow: *first*, our business would be left exposed to the competition of whomsoever might see fit to engage in the same; *secondly*, the exclusive Privilege might be obtained by another party, in which event our business would be put a stop to altogether, and the value of my fifth, together with the four fifths of Mr. Tudor, be reduced to *nothing*; and *thirdly*, the precarious title by which we held the ground on which the ice-house stood, (which, it will be recollected, had been erected on the express condition that it should be removed whensoever Mr. Tudor should be called upon to remove it,) was rendered infinitely more precarious, because the only reason which had induced the authorities to grant this *lease-at-will*,—to wit, the contract with them,—no longer existed.

To procure the renewal of the Privilege, necessarily became, therefore, the primary object with us.(e) But it was no easy mat-

(e) The following extract from a long letter of Mr. Tudor's, under date April 28, 1824, shows how very "coolly and dispassionately" the subject was at first treated by him. Long before the year was out, however, his tone underwent a change;—by no means,—as the reader will come to perceive,—a rare phenome-

ter; for several competitors presented themselves, and the competition soon waxed so warm, that one of our rivals, (a person at this present time yet living in Havana,) went so far as to attempt to drive me from the field by threats of personal violence. Meeting me one day on the wharf, he referred to what he chose to look upon as my unwarrantable interference with his interests, and said, "Young man, take care you don't get a knife into you!"

During this contest for the exclusive Privilege, the business was open to all who might choose to engage in it; but, fortunately for our interests, those who purposed doing so were intent, in the first place, upon obtaining the Privilege, as the means of excluding all competition, and especially ours, which, as we were already established, was felt to be the most to be dreaded. In their efforts to obtain it, they exhausted themselves, and lost time; and the consequence was, that we were left in as exclusive possession of the business as if the old Privilege had still been in force.

non. [It is to be observed too, that the date at which he thus speaks of the "*ex-Privilege*," as he terms it, is some days prior to that of my letter informing him of my discovery of the existence of this *valuable entity*. It follows, therefore, that he must have received his intelligence on the subject,—if so be he needed any,—from some one else. At any rate, so far as *he* was concerned, I could claim no patent for the discovery, on the strength of my letter of May 21.]

"As respects the *ex-Privilege*, no one can obtain it without notice being given to me; and as the time of the revolution has passed without any one stirring, it is probably best not to move in it. Silence is valuable. Not to make the matter a subject of question is best. There remains a general impression that the ice business is a subject of exclusive Privilege; and this *impression*, now that the government is despotic, is strengthened. In my opinion, it is the part of discretion not to say a word about privilege.

"But the best privilege, and the greatest security, will be an exact attention that no whispering shall go abroad that the ice business is very good. That this may not be the case, never forget the verbal instructions which I have given you to be followed. Do not buy your bills *all* of one House. Nor send me always bills; when bills are at par, dollars will be also;" &c. &c.—"If one man says the ice is profitable, another adds to the story; and so it grows to a magnitude entirely beyond the reasonable and moderate thing it is."

This, it must be confessed, was all very "cool and dispassionate," and very "snug and comfortable." A more felicitous mode of stowing away the "any Privilege" could not well have been devised.

And yet, but two months pass over, and then, under date July 2, 1824, he discourses in the following strain:

"I shall consult with Mr. — of the expediency of attempting a renewal of the Privilege, which will be *more important* if the street sales are undertaken, and the jars get into vogue. When once it becomes a general custom to use cold drinks, the sales may be expected greatly to increase. This kind of use for the ice is evidently growing.—The use of ice for creams, is limited to a certain amount, but for cold drinks every thing may be expected, and *protection* by the *privilege* becomes *more necessary*."

In one breath the Privilege is a mere matter of moonshine. In the next, it is *necessary*, in the exact proportion as the business may be worth pursuing! And thus will it be found to be with Mr. Tudor, *throughout*, in *all things*: questions of *expediency*, and questions of *justice* and *obligation*.

Thus did *accident* operate in my favor, and *give me a reality*, in place of the *nonentity*, for a share in which my money had been paid to Mr. Tudor. Meanwhile, however, I was not allowed to enjoy this good fortune in idleness. It had to be worked and contested for; (*f*) and, whilst the toil and trouble of the contest fell almost entirely upon me,— Mr. Tudor seeing fit to turn a deaf ear to my repeated and urgent representation of the necessity of his presence at Havana,— any advantage which might attend my exertions would belong almost exclusively to my partner. Instead of the peaceful enjoyment of what his bill of sale and contract professed to secure to me, in return for my money and the services therein specified, the thing for which my money had been paid turned out to be the right to render to Mr. Tudor, in addition to the services which I had engaged to perform, that of fighting a battle for a renewal of the Privilege, among other things; and gaining for him the advantage of owning four fifths of it, as the only way of securing my own share.

This intermission of the Privilege lasted about seven years; (from the beginning of 1824 to late in 1830,) during the greater part of which the subject was one of intense anxiety on the part of Mr. Tudor no less than of myself. A few extracts from his letters in 1824, will suffice to put this fact, and others connected with it, in a strong light. His lawyer at Havana was the distinguished Don Nicolas Escovedo, to whom on the 25th October of that year, he wrote a letter, of which he transmitted me a copy, that reads in part as follows:

“I am desirous of making a new contract for ice. I understand some other persons have made proposals to the Cabildo, full of great promises. But how can they fulfil them without ice-houses either in Havana or this country. I shall by this opportunity send out to Mr. Damon sufficient evidence of the immense expenses I have gone to for the purpose of furnishing ice from this country in summer.

“I hope with your aid to make a new contract for supplying Havana, with an entire relinquishment of the tonnage duty, which is of the greatest importance. I have to request of you to bring this business to as speedy a determination as may be, before the commencement of winter, and before any of the new pretenders can do anything in the way of interference.”

To myself, he writes on the 30th of October, enclosing ex-

(*f*) One of his letters in 1824, winds up with the following valorous exhortation: “You have a *battle* to fight, and I expect you will do it like a brave man.”

tracts (g) of two letters received by him from friends in New York and Philadelphia; through whose aid, in part, he promised himself success; and he says:

"I think when — and — shall get out to Havana, they will add such an increase of strength that we can get on," &c. "I have no doubt of getting well through this business, and that these new *Gobertos* will do us good rather than harm. We shall be strengthened; but what is wanted is *despatch*, so that the interferers may not be able to get out any ice."

The *Gobertos* to whom he alludes, and in regard to whom he is anxious for *despatch*, are the competitors for the Privilege, who had expressed the intention to import ice the coming winter.

He called them by this name because it was that of a competitor whom Mr. Tudor had had at a former period.

One thing in these extracts is rendered particularly worthy of remark by Mr. Tudor's subsequent course in denying that I had acquired any permanent share in the concern. He speaks always of *us*, as the party opposed to these new *Gobertos*; they "will do *us* good." "*We* shall be strengthened."

The same feature is still more prominent and striking in his letter of November 6, 1824:

"You will, before you get this, I hope, have received the many letters and documents," &c. "*We have a great stake*; you have your fortune depending upon a good issue in this contest; and I have done all that I can, and I hope to inspire you with courage to assert my cause. For it will and *shall* prevail. The Count — and Mr. — are coming to your aid, and to defend me against these trashy, washy people."

"When we get over this difficulty, we will build a great ice-house, that shall by its *permanent appearance* appal such poor creatures as are now alarming you."

Here again, as is seen, it is "*we*," all through. At that time, I was told, "*you* have your fortune depending;" and "*we* will build a great ice-house, that shall, by its *permanent appearance*," &c.; which words, to make them the more emphatically significant, were underscored by Mr. Tudor himself.

The result, however, of all these efforts of Mr. Tudor, and of the commanding influence which he conceived himself to have brought to bear upon the subject, was, that *nothing was accomplished*. It was not until about six years after, — and then through

(g) One of these says, "Count — *thinks* he can get the exclusive Privilege renewed." The other says, "I will do all I can to promote your object of obtaining the exclusive Privilege of furnishing Havana with ice: for indeed I think no one is entitled to it but yourself; having persevered so many years, and expended so much time, trouble and money for that object. You may depend upon my exertions; and if — is still in health, *I shall have hopes of success*."

my exertions chiefly, — that the renewal of the Privilege was obtained ; and during this whole interval, our interests stood upon that precarious footing, which, notwithstanding Mr. Tudor's reproaches concerning the "alarm" that he attributed to me, continued to be with him a source of intense and undissembled anxiety. (h)

NEW LOT FOR AN ICE-HOUSE, &c. From this source of difficulty, I will pass to another, closely connected with it, and often blended with it in Mr. Tudor's letters and in the insulting reproaches with which they came fraught.

The state of the building used as an ice-house soon proved to be worse than I had formed any idea of. (i) Notwithstanding

(h) About the middle of November, 1824, the *Cabildo*, or *Ayuntamiento*, (City Council) passed a vote in favor of giving the preference to the former contractor (Mr. Tudor) over the other applicants. Further action on the subject was postponed until their next meeting; when they were to take under consideration the limitation of price, the term for which the Privilege should be granted, and other details.

Owing, however, to a variety of causes, the matter stood still for about eight months. In July, 1825, a committee of the *Cabildo*, to whom the matter had been referred, reported the draught of a contract, fixing the price at one half real per lb., exempting vessels bringing ice from tonnage duties, and giving the exclusive Privilege for the term of six years from the 1st of Jan. 1825.

This draught was approved; and the contract, in this shape, was agreed to by the *Cabildo* and by Mr. Tudor's attorney. But, owing to obstacles interposed by the *Redi Hacienda*, whose concurrence was requisite, and the head of which department notified to the *Cabildo* not to proceed in the matter until it should have decided whether it were not expedient, instead of granting a new Privilege, to open the ice trade and to subject it to an import duty, the subject progressed no further: the Privilege — to repeat the expression made use of by one who was exerting himself in our behalf — was "hung up." One advantage, however, resulted from what had been done; whilst the subject remained in this state of suspension, the existing establishment was looked upon with great indulgence, and was permitted always for the moment to enjoy that to which the contract (although demurred to by some of the authorities) would have entitled us, had it been completed. By the *Cabildo* — on which body we depended for being allowed to continue to occupy by sufferance the lot on which the ice-house stood — it was, to use the expression of one of the members, considered that it "had about concluded the contract;" and hence a disposition on its part to show us every favor, notwithstanding any opposition to the granting of the Privilege, from those whose concurrent action was requisite. By it, and its officers, "the contract" (as the above mentioned draught was termed) was, in after years, considered as fixing the time during which, if practicable, we should be deemed to have a claim to the indulgence.

For extracts, showing, for the first two years, the course of this current in the "sea of troubles," which it pleased Mr. Tudor to leave me to buffet with, see Appendix. (c)

(i) On this subject, Mr. Tudor's letter of April 28, 1824, above quoted from, (see note e) contains the following:

"I have your letter of the 3d inst., in which you mention the swelling of the sides of the house and rottenness of the ties, &c.; a thing which I expected would take place, but not so soon."

He then goes into a long dissertation upon the principles on which the new house, when built, should be built; at the close of which these passages occur:

"The great difficulties and uncertainties attending everything in Havana operate as a discouragement to undertake anything; and therefore patching must be adopted and long continued, as I think. The house, you know, is very rotten; and the ex-

some endeavors to strengthen it before putting in the ice brought with me from Boston, this was no sooner done than its sides gave way in such a manner, as to occasion for ever after, constant uneasiness and never-ending trouble, besides great expense. The difficulties arising from this cause were greatly aggravated by the peculiarity of our position in regard to the ground upon which the house stood. The space that it occupied was already too small. The more especially as Mr. Tudor had determined to conduct the business upon a new plan; which was, to send out and store away at once, "a fourteen months' supply." To obtain the grant of an addition to this space, was impossible; and therefore, to provide a remedy, by erecting a new building round the decayed and falling edifice which contained the ice, was out of the question. These causes conspired, therefore, with the precarious tenure by which we held the ground, to render it indispensable that a new site should be procured.

Every possible exertion was made by me to procure one, but made in vain; and this state of things continued for upwards of seven years, during which Mr. Tudor's "*instructions*" upon the subject were as imperious as if nothing but his *fiat* was requisite to accomplish anything he pleased, and his reproaches were as unmeasured and insulting as the blackest bile could make them. A few extracts from his letters towards the close of this

pense of a new one will consume a whole year's income. The plan for the new house is at present not necessary; because it will be years before it will be carried into effect. In the mean time, to keep together the present house (as I suppose for several years) must be *your* endeavor."

And, true enough! "patching" was the word, and "long continued" to be the word, under Mr. Tudor's mandate. To afford a conception of the labor and trouble thus imposed upon me, (in place of the *promised* comfort of living and conducting the business in that "new house," which was to be built at Mr. Tudor's sole expense,) it would be requisite to give entire, the volumes of my letters to him, wherein I had to make a detailed report of all my proceedings. Before I had been a month at Havana, I had to write, "last night we had nearly completed the boarding and filling in of the south side, when of a sudden the west side began to swell out, and has swelled or bulged to such a degree that it will have to come down." A few months after, "The present addition is not quite finished, although I can receive ice, for the vault is done except the extra covers. You said it was advisable to make the extension at an expense of three or four hundred dollars; I have already expended near one thousand dollars."

This will serve as a specimen of the nature of the duties of "ice-house keeper," as modified by Mr. Tudor's sovereign dispositions; and also of the way in which *my* money went "to keep together the present house." And this was kept up *seven years*! And when, near the end of this period, as will be seen hereafter, I had every reason to expect to be required by the authorities to remove *instantly*; and, as a provision for this impending necessity, had retained in my hands some of the receipts of the ice-house which would otherwise have been remitted to Mr. Tudor, this obviously indispensable provision on my part, elicited an explosion of his sweet nature, in the shape of the accusation, that I had retained these funds through the double motive of fear to lose money of mine then in his hands, and a desire to apply his money to usurious uses for my own benefit!

period will convey an adequate idea of the man and of his conduct.

To make these extracts perfectly intelligible, it is necessary to premise, that, towards the close of the year 1829, the city authorities having, agreeably to the right reserved to them in the lease, required the removal of the ice-house, I had partially succeeded in obtaining from them the use of another piece of ground. A portion of the corporate bodies, whose consent was requisite, had given that consent; that of the rest was hoped for; and I purposed, so soon as this matter should be concluded, to commence immediately to build upon the new lot, and whilst this should be doing to remove the ice provisionally to some other building. This intention on my part,—the only one I could entertain without setting at defiance both the obligations of a solemn engagement and the authority of the Government,—incensed Mr. Tudor to the degree that is shown by a succession of explosions, of which the following is one:

“BOSTON, September 18, 1829.

“MR. J. W. DAMON,

“I have at hand your No. 29, of 22d ult., and now send you *triplicate* of my No. 24, in order that you should read it with attention *again*, and *particularly* that part of it where it is plainly put down, *that I shall not build the present season if the Cabildo should make the grant of the land.* (ii)

“They will not make the grant, that is, the officers of the Government will not allow the papers to be completed until they are *obliged to for their own convenience*. Nothing will ever be finished until they begin to undermine the ice-house, and we make thereupon a representation that the city *will go without ice*. The great and small rascals about the government *will then have to give way* without even *Cosítas* in the way of gratification. They

(ii) The contumacy which I was here instructed to exhibit towards the authorities was, considered in itself, *preposterous*. But, considered with reference to our previous course, (to say nothing of his own solemn covenant with, and obligations towards them) it was far worse; it was scandalous and *shameless* in the extreme. Memorial after memorial had been addressed to them (and these would have been ten times as numerous, had I obeyed Mr. Tudor's endless instructions to renew them,) representing the urgent and *immediate* necessity of a new house. Just five months before his present letter, he had urged that the loss of a vessel loaded with ice for Havana should be used as the occasion for another memorial:

April 15, 1820. “I would recommend by all means a representation to be made to the Cabildo respecting the loss of the *Frances* and the *impossibility* of making the supply sure, *unless a large house is built.*”

In a word, the course prescribed by him to me, to be pursued towards the authorities, implied such absolute contempt for their understandings, (to say nothing of contempt for plighted faith) that had I conformed to his endless instructions, they must have looked upon me as a downright *idiot*, who measured their capacities by my own.

shall not have anything ; they have already taken the money's worth in variety of vexation and ruinous delay.

" In your mind always keep clear upon one point: *that they cannot get rid of the ice-house as long as we choose to resist.*

" Also keep in your mind, that *I understand my own business ;* and that I mean the ice-house keeper at Havana, whether he be J. W. Damon or any one else, *shall follow at all times the positive instructions* of his humble serv't,

FREDERIC TUDOR."

Here it is seen, that Mr. Tudor, in violation of his own recorded engagement, announces his sovereign will and pleasure to be, that no new ice-house shall be built, — in other words, that the old house shall not be demolished and removed, — "the present season." No, not even "if the Cabildo should make the grant of land," which I, as his partner and agent, had *for years* been urgently soliciting in his behalf! And on this ground, too, among others ; that the building was, as every one saw it was, tumbling down ; and that consequently it was indispensable to proceed *instantly* to the erection of a new one!

Next he instructs me to "keep my mind always clear upon one point: *that they cannot get rid of the ice-house as long as we choose to resist,*" meaning by "they" the authorities of the city of Havana, civil, military and municipal! It was by their concurrent sanction, that he had been permitted to erect the building upon public ground ; and towards them that he had contracted the solemn engagement to remove immediately upon notice given!!

From this instruction, he proceeds to another: the import of which is, that when *he* issues a mandate my province is, not to make any reply, but to obey ; and that he is resolved to be obeyed by me, whether his mandate should be merely to batter down the Morra Castle, or to annihilate the whole power of the Spanish government. Whatever the mandate may be, I am to bear in mind that he *understands his own business ;* and that he does not allow any one to presume to say that what he has resolved upon cannot be accomplished, or to offer any such impertinent objections.

Besides conveying these instructions, Mr. Tudor's letter lays down also his plan of operations for annulling the obligation of his own solemn engagement, setting at naught the authority of the Government, and even compelling it to yield obedience to his requirements. It is not on this occasion merely, that this notable plan was brought forward. It constituted his chief and favorite resource, and the basis of many of those "instructions" which I was so forgetful of my duty as not to fulfil. The lead-

ing idea is seen to be, that the Government must be *intimidated* into acquiescence; and this, by means of a popular clamor arising from the impending danger of a famine—of *ice!* (j) We must hold out in our citadel “until they (the Government) begin to undermine it.” Then we must “*make a representation that the city will go without ice!*” This will stir up such a tremendous commotion, that all opposition “*will then HAVE* to give way;” and the Government will be *compelled* to order everything in conformity with Mr. Frederic Tudor’s mandates!

On the receipt of this letter, I wrote, under date October 26, 1829, to a friend of Mr. Tudor; one of the two on whose influence he had, in 1824, so confidently relied for obtaining the renewal of the Privilege. The following extract from my letter begins, it will be perceived, with an expression of doubt as to Mr. Tudor’s *sanity*, a doubt which, if I mistake not, the reader will consider fully justified by the letter he has just perused:

“It appears to me that Mr. Tudor is beside himself in saying ‘*they cannot get rid of the ice-house as long as we choose to resist.*’ It is expressly said in the Captain General’s (*Apodaca*) decree of the 8th February, 1816, ‘The Petitioner binds himself to the Excelentísimo Ayuntamiento to pay the rent for the ground *and to demolish and remove his house whenever this shall be required by the Ayuntamiento with the approval of the Gobierno*, in order to the prosecution of the public works now contemplated on the Plaza San Francisco in connection with the new wharf.’ It is also said in the Report (16th February, 1816) of the Commissaries and Syndic, appointed to mark out the ground, ‘the same Petitioner binds himself to pay *monthly*, and not *annually* as he had proposed, the ground rent stated, *and to evacu-*

(j) I am assured by a learned friend, who has read Goldsmith’s History of Rome, that this idea was not, as I supposed it to be, entirely original with Mr. Tudor, but that it is borrowed from incidents in that history. He tells me, that the only merit of Mr. Tudor consists in his discerning, that the same effect might be produced at Havana, under the Government of Spain, by the prospect of a famine of *ice*, that used to result at Rome from the prospect of a famine of *bread*.

This idea being urged anew by my partner, I wrote him, under date Nov. 21, 1829: “I am not so certain that it will have very great weight with the Cabildo to hear that the city will be without ice; for it appears to me from the Comisario del Cabildo [one of the Executive Committee of the City Council. I will remark by the way, that, because the police magistrates of the several wards, who exercise subordinate executive and judicial functions, are called *Comisarios*, Mr. Tudor, in his self-sufficiency respecting Havana affairs, deemed very lightly of *all* *Comisarios*: That is to say, the word always awakened in his mind the idea of “very small gentry;” and it was not a little irritating to his gentility that I should evince such continued proofs of my low origin as to attach importance to the dispositions or doings of a mere *Comisario*,] that he has an idea of some one else becoming contractor, unless we procure another place.” In the same letter, I say:

“It is my sincere opinion that *some person better qualified than myself is absolutely necessary* for the safe conducting of the ice business at present. For myself, I would be glad if you were here.”

ate the ground immediately upon being so required by the Excelentísimo Ayuntamiento with the approval of the Gobierno, in order to the prosecution of the new work which is to be made on account of the new wharf. All which he shall bind himself to fulfil by a public contract in the Notariate of the Gobierno and Cabildo.' How Mr. Tudor is going to get rid of this positive engagement, and that, too, after the Government shall have granted him another lot, I am at loss to conceive.

"I desire that you would give me your opinion on this: for I fear that he will lose the whole establishment; in which case I shall be ruined." (k)

(k) At the same period, I wrote, under date Nov. 2, 1829, a long letter to Mr. Tudor, from which I copy the following:

"I have urged the necessity of a new building so much, that I am ashamed to say more, for fear you may think I have some private motive in so doing; and I shall only stand still and wait the result of the affair in the Cabildo. If it shall be to build, in this square, [that is to say, if the authorities should grant us the lot we had been for years importuning them for, on the alleged — and true — ground of the urgent necessity of a new house,] I think it *my duty* to take possession by commencing the work; and you can send somebody else to carry it on or not, as you may think proper. If it [the decision of the authorities] shall be against building on this square, then *I am done*; for I do not think myself equal to contend with the Government, *against positive agreements*; and that, under the present rotten state of the house, which looks as if it would fall of itself every day. I have said *positive agreements*, because I find in the decree of the Captain General, [Apodaca] of the 8th Feb. 1816:" [Here giving extracts from that and other documents; his own formal acceptance of the conditions included.]

"I say, that under all these circumstances, *you had better send some more efficient person* to take charge of this business."

Ten days after, I wrote him another long letter, part of which is as follows:

Nov. 12, 1829. "Your No. 26, of 16th Oct., was received yesterday. I have turned to your Nos. 23, 24, and 25, and read them over and over again. I have also looked over all my letters from No. 30 to the present, and after due deliberation and a review of my past conduct for eleven years in your employ, I can see nothing that needs to be repented of. You did once write me to make suggestions of anything that came to my knowledge or mind respecting the ice business; and sometime after I wrote you, giving my opinion on some particular things, when you replied that you should not be dictated to by me, that it was *you* who held the government, &c. I now urge the necessity of a new house, and you say it shall not be built yet. I do not wish to dictate to you; but I must advise you of the present state of the house, and the consequence likely to follow; as a sailor would his captain, if breakers were ahead. It is my opinion that if the permission is granted to build, and it should be known you did not intend to do it this season, others would come forward and solicit it for themselves; and *I have but little doubt of its being granted them*. [And who could entertain a doubt on the subject?]

"You blame me severely for not making remittances. I have already stated the many difficulties encountered in making them at such or such a time; and as it has been expected that we should have to build this winter, it *was necessary there should be funds to do it*. I recollect a conversation with you, in your room, when I was last in Boston, about funds for the new house; when you said you did not wish to borrow money from any of the merchants here, that you would not be beholden to them, &c." [It will be seen, that when the new house had to be built, and money had to be raised for the purpose — Mr. Tudor having none — this lofty tone fell considerably, and yet to no purpose: for, the money refused to us had to be borrowed by me.] "*It was then answered that the sales must be reserved for that purpose for some time previous.*"

Such was the position in which I had placed myself by becoming Mr. Tudor's partner! Beset on all sides with daily

The "difficulties" in regard to "remittances," at stated periods, above referred to, had been explained to him over and over again. My last reply on the subject, under date Sep. 3, 1829, had been as follows:

"Your above mentioned letter contains three articles, which you say you wish me to consider as renewed instructions, and that I will inform you whether I will follow them or not. To this, I say, I have no objection *as far as is practicable*; that is, I will forward an account of disbursements at the close of each month; but to say I will make remittances at the close of each month, or at *any* stated periods, I *cannot*; for I should be promising that which I know I should not be able to perform. But this I will promise, that the two thousand dollars [agreed to be forwarded annually from first proceeds] and every cent of the balance accruing at the close of each and every month, shall be paid over to any one you may appoint to receive it."

My letter of 12th Nov. was followed by one written so soon as it was ascertained that apparently insurmountable difficulties existed to our then obtaining the desired grant of a lot. The following is an extract:

"Your Nos. 27 and 28, were received to-day, and I am sorry to learn that you suppose the reason of my keeping money here is fear of losing money now in your hands. This, I assure you, never entered my mind; and there has been no other reason for keeping it than that heretofore mentioned—the building of a new house. But as there is now no probability of building, there is no use for money; and so soon as it can be remitted, I will do it. And the interest you can charge to me, as you say that I have been the means of your paying interest unjustly; and if there shall be a difference in premium of exchange between now and any time you may say the money ought to have been remitted, charge me with it also. I do not make this offer as an atonement for past guilt, nor to smooth the way for the future: because I think if I were placed in like circumstances again, I should be likely to do it again; and I believe if you could have been here, and seen the things going on, and known our situation, you would have approved it." [Considering that he was kept advised of the state of things, by detailed accounts of their progress from day to day, this certainly was a belief that I had no right to entertain. Even at that period, I had no right to believe, or to suppose, Mr. Tudor capable of reason or justice, except when the balance of a calculation of dollars and cents lay on their side.] "If I have taken upon myself unwarranted authority or liberty, it has not been done on account of moneys in your hands, but of the necessity of being able to build so soon as the permission should be granted; which was promised, and expected almost every day."

Such was the first idea, in regard to my motive for retaining the funds, suggested by the "generous nature" of my "munificent patron!" I had kept them through dread of losing the money he had borrowed of me! By the next full moon, the swelling tide of his nobleness poured over in the following glorious curve of liquid emerald:

"Charge 3d. Employing the money of the Havana ice-house, both last year and the present, in loans or buying notes at excessive interest; which interest you put into your own pocket, and which I require to be accounted for as part of the revenue of the ice concern, without consenting to the loans if still at risk."

This was the November substitute for his October theory! In arriving at this solution, did Mr. Tudor rest upon data supplied by his knowledge of me, or upon those supplied by his knowledge of himself? The latter branch of the question, I shall not undertake to answer. With regard to the former, I will refer to his reiterated protestations of unshaken confidence in my integrity, (and, what is, perhaps, more entitled to reliance, to his acts, to his unshaken anxiety to trust me,) commencing, as has been seen, in 1824, and continued, as will be seen, down to the 26th day of October, 1837, when the following flowed from his pen:

"My hope and expectation is, that you will be disposed to preserve your connection with me in this business, &c. &c. I give you my word that I have NEVER considered my interest and property otherwise than safe in your hands." [See note (H.)]

renewing difficulties and embarrassments ; and, as the compensation for all my toil and trouble, threatened with ruin by the folly of the imperial gentleman who, snugly ensconced in his arm chair at Boston, secure from all consequences, was pleased to "instruct" me in a course not only of breach of contract and of faith, but of downright *contumacy* ; and not of contumacy merely, but of premeditated *turbulence* and *sedition* ; which, had I been dishonest enough and mad enough to attempt it, could not possibly have resulted in anything short of the utter destruction of our business and utter loss of our property, and might very justly have subjected *me* — Mr. Tudor being all the while snugly entrenched in his elbow-chair at Boston, writing "instructions" — to imprisonment in the Morro and transportation to Centa !

In the same strain are his other letters of the period. In the following, of November 12, 1829, it will be seen, that, among other mandates, one is, that I shall *demand* of the Government to be left for twelve months more in possession of the ground which he had bound himself to vacate the moment he should be called upon ; and which, months before, he had been called upon to vacate ! As if the word were not strong enough of itself, he *underscores* it, in order to make me fully sensible that the meaning of this mandate is, that my address to the Government is to be put in the shape, not of a *request*, but of a *command* !

"In one of your late letters you speak of obtaining a new situation for the ice, until the new house can be built. I have already instructed you to go to Dr. Escovedo and have a memorial to the Cabildo drawn, objecting against further encroachments upon the old house, and *demanding* twelve months for the erection of the new house.

"If you neglect this instruction, as I presume you will, I shall be indebted to you for the utter ruin of the Havana business ; for the moment the old house is pulled down, then it will be utterly impossible ever to get the new lot. It is that the present house is an embarrassment to them, and they have no other way to get rid of it, but by the grant of the new lot. I shall feel no safety until the new house is erected.

"I propose to have granite quarried and prepared here, and shipped next Fall for the house, when the dimensions are given ; but if you neglect this instruction to resist encroachment, every thing will be at an end about a lot, a new house, or any further prosperity in the Havana business.

"*Neglect it therefore at your peril.*"

A few days after, he pours out another torrent of mingled

"instructions" and calumnies ; the latter of which were, in point of truth, upon a par with the former in point of sense. One of the "charges," as he calls them, here strung together, is,

"Not resisting with proper energy, encroachments on the ice-house, whereby the concern is endangered. You were duly instructed in this matter ; and, *had you followed your orders to memorialize the Cabildo, the grant of the new lot would long since have been made.*"

Two days after this was written by Mr. Tudor at Boston, the following was addressed to him from Havana, by Don Nicolas Escovedo, that same "Doctor Escovedo" to whom Mr. Tudor had instructed me to apply. So conclusive a proof of the utter groundlessness, sheer wantonness, and downright nonsensicality of all the abuse in which he had been indulging towards me, could scarcely have failed to elicit from any other man than Mr. Frederic Tudor an acknowledgement of error and injustice, and operate as a check for the future. Upon him, neither effect was produced. He did not even so much as pay to the letter,—the writer of which was the most eminent lawyer, and one of the most eminent and beloved citizens of Havana,—the respect of an acknowledgement ! He looked upon it, perhaps, as indicative of impertinent skepticism in the infallibility of Mr. Frederic Tudor ; and saw at the bottom of it a doubt in regard to the point, whether that august personage did really *always* "understand his own business."

"HAVANA, November 28, 1829.

DEAR SIR,

Mr. John Damon, your agent at this place in the ice business, has presented me a note expressive of your wish, that a memorial should be made to the Cabildo, representing, that, for the construction of the new house, one year's time is requisite ; that, until it is finished, the present store can neither be removed from where it now is, nor can it be touched, because the pulling down of the adjacent houses, and the action of the weather, have reduced it to a state of deterioration that makes it difficult to preserve the ice ; and ultimately, praying an exemption from the duties for the materials, and the vessels which bring them ; resting this prayer on the merit of having reduced the price to half of what was stipulated in the contract, and on the public benefit which this merchandise confers, and the evils which would be occasioned by the want of it, and which are irremediable except by the construction of a spacious and solid edifice in a good situation.

"The idea of asking an exemption of duties for the materials, and for the vessels that fetch them, is *absolutely not to be followed.*

At whatever epoch, I am persuaded that the authorities would have rejected this prayer; and in the actual circumstances of the Exchequer, it would, in my opinion, be very prejudicial to you to move the question of duties in matters relative to the ice; because it might give rise to the idea of charging duties on the ice itself, and the vessels bringing it. The reasons which you suggest, would be of no weight in support of such a prayer; they have been urged by me a thousand times in the applications that we have repeated by writing, and by word of mouth, in order that the subject of the new house should be despatched. *This point alone*, without complicating it with any others, has always been encompassed with difficulties. I suppose that Mr. Damon will have informed you from time to time of all the memorials, of all the discussions, and all the solicitations, which this business of the new house has cost; in the course of which, hardly one day has passed in more than three years, that Mr. Damon has not had to take some step in pursuance of my advice, and that of other friends. But, as you will already have learned from the communications of Mr. Damon, when we obtained permission to build where we desired, the work could not be begun because a question arose between the Royal Hacienda and the Cabildo about the property of the land; when this obstacle was removed the Director of Engineers opposed all building on the site granted by the Cabildo, because he considered it prejudicial to the fortifications of the city; when we obtained the permission of the Director of engineers to build on another site nearer the centre of San Francisco Square, the Cabildo opposed it because they did not choose to have any obstructions on that square; and now we are endeavoring to procure from the Cabildo another place on the water-side that would answer for our object and be free from the objections referred to.

"The prayer should for the present be *confined to this point*, without entangling the subject, or augmenting difficulties, with other ideas that give rise to other questions. Such is my opinion. With the frankness proper to my character, I have expressed it to your agent, he has requested me to express it to yourself directly; and this is my motive in writing this letter." (k k)

(kk) On transmitting this letter, I said, "Dr. Escovedo's letter was given to me open, with a request that I would forward it. I would have given it one of my clumsy translations but for the employment I have had about the money shipped, and that my old black man is sick. I have taken a copy, and will give a translation soon! but you, in the meantime, will get the letter, and probably understand the greater part of it."

"If the question of a new lot is not settled soon, we shall have to go over the whole affair anew; and with it, will be joined that of the Privilege. Mr. D —,

MANAGEMENT OF THE ICE BUSINESS. The waters of bitterness, of which I have given specimens above, flowed from two sources of trouble with Mr. Tudor. Considering the quality of the fluid and the copiousness of its flow, these two sources were, in all conscience, enough for any one poor mortal to be afflicted with. But they were not the only ones. Indeed, after what the reader has seen of my partner's character, he will not require to be told that new ones must necessarily have been breaking out every day, and that my tormentor's vexations were literally without end. I will confine myself to two of the subjects which afforded pretexts for them.

That my management of the business of the ice-house, whilst engaged as Mr. Tudor's agent, and my general conduct, so far as the prosperity of that business could be affected by it, had been in the highest degree satisfactory to him, is established beyond dispute by the anxiety manifested by him to induce me to connect myself with it permanently. So, likewise, in regard to the compensation paid by him for my services; far from considering this as exorbitant, he gave the strongest proof which could be given, that, agreeably to his own secret estimate of the value of those services to himself, what he paid for them fell far short of what he could afford to give. We have seen, that, as an inducement to engage to render them for so short a term as "three summers" merely, he spontaneously offered to give me, *over and above the ten per cent.*, a permanent share of one tenth of the property and business; and furthermore, that the new house, of which I was to be part owner, should be built entirely at his expense.

No sooner, however, had I taken that fatal step which deprived me of my free agency in regard to Mr. Tudor and his concerns, than every thing became totally changed in both these respects. My management and conduct, so highly satisfactory when the motives for exertion arising from my position were less strong than they necessarily became upon my acquiring a share in the property, became the topic of incessant fault-finding and insulting animadversion. And my compensation operated as a no less active cause of development to the amiable disposition and just spirit of my partner.

As a specimen under the former head, I will give one of Mr. Tudor's letters entire, dated May 14, 1824, two months only,

has always held the opinion that another Privilege would never be granted with the exemption of duty on tonnage of ice-vessels, if it was on the ice itself. If you can make it convenient to come here this winter, I think it will be advantageous to the ice business." [The gentleman whose opinion is here referred to, is the one to whose friendly exertions what was effected for us in the Cabildo — of which he was then a member — was chiefly due. See note (h.)]

after my arrival at Havana, to resume, as his partner, the same position and duties (the latter immensely increased, as has been seen, by causes altogether unforeseen by me) which I had so satisfactorily held and discharged as his agent. This letter, indeed, is the *fourth* of the first series, which commenced much earlier, and but a very short time after Mr. Tudor had received intelligence of my arrival at Havana. To facilitate its comprehension, I will remark, that the "jar at Regla" and the "street sales" have reference to two measures for extending the sale of ice, which, in conformity with his instructions, and for my own obvious interest, I had used every endeavor to put in execution. But independently of the sea of troubles in which I had so unexpectedly found myself, our means were at best but limited, and it had as yet proved impossible to find any one who would undertake these branches of the business.

"I have to-day yours per C. C. with account of sales and a bill for \$300. For the three last days of these sales, there is no account of 'weight of water' [from melted ice.] I regret this exceedingly. It is a very great satisfaction to me to see everything regular. To see the sales progressing and increasing is very agreeable; but I see no mention of a jar at Regla, or a commencement of street sales: I regret this exceedingly.

"I observe that you are engaged about lard selling and molasses buying. I regret this exceedingly. I certainly do not wish to restrain you in such little things; but I feel confident that all these kind of things will always end badly. You will lose money by them. Molasses is now selling here at 23 cents, six months' credit," &c. "I ask you now, whether from first to last, taking all your adventures together, you have not lost money? They occupy time and attention, to no profit. The same time and attention being given to *instructions* would produce money in your pocket in the end, and great satisfaction to me.

"In quality of ice-house keeper you have great pay, and, as one fifth owner of the concern you have a great prospect. Do not therefore, I pray you, continue to vex me by omitting to do what is a very favorite object with me, and by which, I think, we may raise the sales very greatly *beyond even their present prospect*.

"I think I am not unreasonable in reminding you of what you should do as ice-house keeper. If you *will* be a buyer of coffee, sugar and molasses, and a seller of articles from this place, why do it: but give up your situation to another at \$75 to \$80 a month, and retain your fifth. But, having given you so favorable an opportunity, I think I ought to expect your *undivided* attention and your whole efforts to further the enter-

prize according to *my* wishes. Surely I ought to expect, *I do expect it.*

"By giving your undivided attention, you will find employ enough: You will know the business perfectly. By letting alone other concerns for the present you will save money. When you have paid off your note, send your earnings and profits home, and have them put into Bank stock, or other securities, where you will find them again when you come home. This is my advice, I hope you will weigh it.

"Although I am in no particular want of money, and approve of your prudence in saving a premium on bills, still there was on the 26th April, more than five or six hundred dollars in the ice-house; which is to be avoided if possible. So the instructions say, and they must be followed as near as they can be: Money in Boston is safe, in Havana never.

"I have now, for the 1st, 2d, 3d, and 4th time, (in Nos. 7, 8, 9, & 10,) expressed my wishes and expectations. If they do not produce the effect desired, expostulation will be vain, and this is the last time it will be adopted. I conclude with saying to you, that, if ever I observe any intoxication in you arising from success; any neglect of regular and understood duties; habitually any long letters to grocers and short letters to me; anything whatever which makes it apparent that I have shown you a mistaken kindness; then you will have lost a friend whom it will be impossible to recover." (1)

(1) Three days after, Mr. Tudor writes another long letter, some passages of which I will quote; premising for the reader's edification, that, some ten years after, Mr. Tudor assumed the ground that the agreement upon which I had become owner of a fifth interest rendered it obligatory on me to reside at Havana so long as he might please; that my interest was "essentially founded upon [my] residence at Havana," and was absolutely forfeit upon my refusal to obey his orders in this respect. The reader will please read the following extracts with reference also to another fact: in the legal controversy which arose between us, Mr. Tudor maintained that I had never been his "*partner*," but always a mere *agent*:

"Now we are upon the subject of having every thing adjusted right, it may be well that I should explain myself on the subject of ice-house keeper in distinction from the concern.

"J. W. Damon as my *partner* and interested one fifth with me in the Havana business is entirely *independent and without control*; but J. W. Damon as keeper of the ice-house is subject to my instructions — a part of the business which is 'reserved entire in F. Tudor.' No portion of this authority was ever sold to J. W. Damon.

"Now if I am disposed to be an unreasonable tyrant — one that it is impossible to satisfy, unjust, ungenerous, inconsiderate, &c. &c., to bear which the ten per cent. is no equivalent; then it becomes a matter of question with J. W. Damon whether he will be any longer ice-house keeper; but while he is in its place he must consent to its discipline.

"The connection in the concern is one thing — the situation or place of ice-house keeper is another. In the first, you are *free to do as you choose*; but by the second you agree to submit to instructions. You are placed by me as ice-house keeper — you may be displaced also.

Such was the spirit and the tone in which I was now addressed! Not content with demanding that my *undivided* attention should be given to the minutiae of the business, as ordered by him; (an absolute impossibility, seeing that a *great part* of that attention had to be given to the defence of his interests and my own from dangers, which at the time of purchasing, I had not the least idea of their being exposed to;) not

"I would not have you for a moment suppose, Damon, that I have any thought which has any variation or discrepancy to the wish which I pressed upon you in March and April, of 1823, while in Havana, nor shall I wish to make any change while you remain unchanged; and leave to your own inclination to determine the time you shall remain.

"But as we are setting out upon a journey together, it will be well that we should adjust little matters and things at the commencement; so that it may be understood who is to hold the reins, which road we are to travel, which seat in the coach belongs to you and which to me — that we may get along well together and have no disagreeable feelings on the way; that I may not be thought to crowd you, or you put your feet upon my benches or occupy with your baggage the parts of the coach which appertain to me.

"If I should instruct the ice-house keeper rather to pick his nails than engage in buying and selling, I think he is bound to do it: but you see I do not. I only advise J. W. Damon not to do it for his own interest. I request of him to give all his forces to understand, regulate and advance an enterprise which is of so much promise; and not to distract his attention by little trifling concerns, with little trifling people."

This passage is given with reference particularly to the points above stated, but there are several other things in it richly meriting attention. One is, the assertion of his right to "displace" me as ice-house keeper, at his own good will and pleasure. Upon this point, I will only refer to the examination of the documents from his hand, contained in § 2. Another is, the ground upon which he claims a right to give me whatever "instructions" he may please respecting the *disposal of my time*, and to require passive obedience of me in this respect as the only alternative to the relinquishment of the post. This ground being, that his bill of sale contained the following stipulation: "the right of instructing the *mode in which the business shall be conducted* is reserved entire in said F. Tudor." This is the ground upon which he asserts that I had contracted the obligation to be his slave, and implicitly to obey whatever instructions he might please to issue regarding the *employment of my time and thoughts*, and even of my money! And this assertion is advanced in the face of the following words, contained in his proposal and in his bill of sale: "if you are willing to return here, conducting the business *as at present*." — "Mr. Damon goes to Havana and is to charge the concern ten per cent. for his services and remittances and other *necessary care of the business, the same as last year*." These are the things which had made me his slave, bound to spend my time *picking my nails*, if it should please him so to "instruct the *mode in which the business shall be conducted*!"

The funniest part of the whole, however, is the *foresight* displayed by Mr. Tudor. "It may be well I should *explain myself*." And this, too, "as we are *setting out* upon a journey together." Most provident and opportune explanation! "*Setting out*," quoth Mr. Tudor!! The reader knows how perfectly applicable these words are to my position on the 17th May, 1824. "Gentlemen," said the steam-boat captain, after the boiler had burst, and the boat was sinking in the middle of the Mississippi river, high up in the western wilderness, "Gentlemen, as we are setting out on a journey together, it will be well that we come to a clear understanding about the rules and regulations. No smoking is allowed in the ladies' cabin. Any gentleman, therefore, who is not conformable will please step ashore before we start." If this facetious gentleman was not cousin german to Frederic Tudor, Esquire, no one will deny that he at least deserved the distinction.

content with prohibiting me to use any little means I might possess in commercial speculation, Mr. Tudor arrogates to himself to give me instructions,—in the shape of “*advice*,” which he trusts will be “*weighed*,”—concerning the mode in which my savings are to be invested!

Immediately on receiving this tirade, I replied to it, exposing the utter groundlessness of all the reproofs contained in it. In regard to the “jar at Regla,” and the “street sales,” I detailed the steps fruitlessly taken by me to put them in operation. In regard to the “lard-selling and molasses buying,” I stated the fact, “that I have not sold a pound of lard, nor bought a gallon of molasses since I arrived here;” and I gave the name of the American House, one of his own correspondents at Havana, who had received, entered and sold, a petty consignment of fifty kegs of lard, which had been shipped to me on joint account by a grocer at Boston, (a very short letter to whom, written simultaneously with one, *three or four times as long*, to Mr. Tudor himself, constituted the only pretext for the “long letters to grocers, and short ones to me,” embraced in his string of imperial prohibitions.) In regard to the non-remittance of money, which he pointed out as a breach of those instructions which “must be followed,” I pointed out the inconsistency of those instructions in requiring that money should always be remitted *immediately*, and in restricting me to the purchase of bills at a discount or *at par*. I acknowledged, that, through my strong disposition *not* to retain his money in my hands, I had violated a part of this inconsistent instruction by purchasing bills *above par*. I stated the fact (which he could know from his mercantile correspondents) that, even at the current premium, bills for such small amounts were not to be had at the time referred to; and I gave him the name of the American merchant who had declined an arrangement which I had proposed in order to obviate this difficulty and enable me to make the remittance. The general bearing of his charge of neglect, was met by saying, “I think I have not neglected anything about the ice-house to attend to other business; in fact, I may say I have had no other.”

Having thus disposed of his specific allegations, I told him, that if he could specify any other part of my conduct which required explanation, he had but to do so and I would make it clear to him or consent to suffer; but in regard to his indefinite censures about “intoxication from success,” &c., they were hard words, which I did not understand. I requested, that if I had lost his confidence, he “would tell me so in plain words;” and I concluded as follows: “*I will thank you to inform me immediately after you receive this, whether you are still dissatisfied or*

not. If you are, I must tell you I cannot serve you any longer : for I cannot serve where there is want of confidence, not only in a faithful adherence to honesty, but in my conduct in general."

In acknowledging the receipt of this letter, Mr. Tudor, under date June 30, 1824, says,

"You may rest assured that it is not a want of confidence in you that has caused my letters from No. 7 to 11, inclusive. I very much regret you should have supposed such a thing possible. I have that confidence, Damon, in your high sense of character, that (whatever other causes of dissatisfaction I may find) a doubt on that subject never can enter my mind. I have known you too long, and believe you free from a thought which would dishonor you as an honest man.

"But this is not the subject in question. It is whether you are not assuming a tone and style bordering on authority, in the Havana business."

This is a specimen of the professions of unbounded confidence in my integrity, (*U*) which, on more than one occasion, Mr. Tudor has found it to his purpose to pour forth ; the last of these occasions, as will be seen hereafter, being *posterior* to the allegation of utter want of confidence in my honesty, advanced by him before a tribunal of justice, as a ground for its permitting him to retain what he had juggled me out of, and was, by the decision of that tribunal required to restore ! In the midst

(*U*) Nor was this "smooth thing" a solitary one. The tone of his letters continued for some time to be wonderfully gracious and even honied. Witness the following samples, from three successive letters :

July 20, 1824. "Since my last [which contained not a word of grumbling] I have your *very satisfactory* letters of 15th ult. and 3d inst."

July 21, 1824. Comparing or contrasting me with another person who had been in his employ, and whom he had thoughts of again employing, he says: "You have run *great risks* for advantages which you possess, and *are to possess.*"

July 29, 1824. "*My dear Damon* ; [instead of the usual Mr. J. W. Damon] I received your letter of the 10th inst. It grieves me much to see you down-hearted and discouraged ; for which I trust there is no cause."—"I had the same indications of disease when in Savannah five years ago, as you have, and also repeatedly since. They are occasionally mere temporary difficulties arising from a nervous derangement of the system."—"Keep up your spirits, and rest assured you have *always* had my *entire confidence.*" [See note (*k.*)]

And so matters went on. His letter of December 22, commences :

"I have received your long and very satisfactory letter of the 27th Nov. and am glad to see you taking hold of every thing relating to the business with a firm grasp, and an utter casting away of all timid and torpid feelings. You appear now to have the best spirit possible, and all that is necessary for maintaining a firm footing in Havana, and sustaining our business there as it should, and ought, and *must* be sustained."

My letter-book shows that all these compliments are but reflections of change in Mr. Frederic Tudor ; and that in regard to my letters and every thing else, I had remained the same, and had but pursued the even tenor of my way. If I merited his compliments "*now*," they had always been my due, in place of his insulting reproaches.

of these professions, his diplomacy, too, is apparent. I had informed him that I would not continue in *his* service, nor in any service, except on the condition of confidence, not only in my *honesty*, but in my *conduct generally*; and I had requested an explicit reply on both points. He dexterously confines his reply to one of them, my *integrity*, so as to leave room in future for that indulgence in imperious fault-finding and abuse, which, it seems, constitutes with him one of the chief charms of existence. But, even on this occasion, lavish as he saw fit to be, of his expressions of confidence, it was not in his nature to make a manly acknowledgement of error. Upon all the points specified by him, he had been demonstrated to be in the wrong, and most absurdly so. But how could *he* condescend so far as to acknowledge this! Forbid it, true dignity! Forbid it, Tudor blood!! He deigns to say that he believes me to be *honest*; but he says this only in order to add, "that this is not the subject in question." What then? Does he go back to his old grounds of censure? This would not do neither. He therefore finds a new ground: the true question now "is whether you [John W. Damon] are not assuming a *tone and style* bordering on authority, in the Havana business!" And this grave "question" (illustrated by a quotation from one of my letters, wherein I had made some remarks upon one of his plans respecting the ice-house, in language which he deemed not sufficiently reverential) is what is now produced in lieu of a candid acknowledgement of error in coming down upon me with a string of insulting tirades, of which I had demonstrated the utter groundlessness!

To any ordinary man, this incident would have proved a salutary lesson. Not so, however, with Mr. Tudor; he is unteachable; if not in all things, at least in regard to what is due to the rights and the feelings of others than his own privileged and imperial self. In less than nine months, what with the endless difficulties at Havana, what with the endless annoyances from Mr. Tudor, my position had become intolerable; and I wrote to him, on the 14th March, 1825, as follows:

"Your letters, Nos. 3 and 4, were received yesterday, and their contents give me great uneasiness. *It is impossible for me to live in continual warfare on all sides.* I am continually engaged in it here, and some threaten my life. You call me impudent, and charge me with avarice, threaten to discharge me from being ice-house keeper, or reduce my pay one half, &c. I now leave it with you to turn me away and settle our accounts as provided in the transfer of one fifth of the concern, where it says, in case of any accident or misfortune happening, &c; or to annul the contract entirely, in which case you will appoint an ice-house

keeper, for I cannot think of selecting one. When I shall have left the concern I do not wish to have any responsibility for the good faith of the ice-house keeper."

This letter is not undeserving attention, as evidence in regard to what *I* then considered to be the nature of my position, resulting from the agreement and transaction between Mr. Tudor and myself. It will be seen to harmonize perfectly with the evidence on the same point afforded by the documents and letters from *his* hand which have been under consideration.

I here propose to him to do one of two things: either sever the connection between us altogether, by annulling the *sale* and restoring my money; or if he would not do this, then to annul the *contract* in all its parts, so that I should have nothing more to do with the management of the business. This proposal, it is to be observed, is made with express reference to his threat "to *discharge* me from being ice-house keeper, or *reduce my pay*." How is this threat responded to by me? In the first place, it is in part already answered by the first words of my letter, apprising him that my position is rendered intolerable, and that consequently I am most willing to extricate myself from it. The only point remaining to be settled, therefore, is, *upon what terms* shall this deliverance take place?

In regard to this point, my own preference manifestly is to sever our connection *altogether* by a dissolution of our *partnership* and the repurchase by him, of my share in the concern. But, inasmuch as the contingency specified in the bill of sale had not occurred, I had no right to insist upon this, and it had therefore to be left at his option. Referring, as I have before said, to his threat to *discharge* me or *reduce my pay*, I tell him that I am willing to be *discharged*; (implying, of course, that I will *not* consent to the *reduction of my pay*;) and I tell him also the condition upon which I am willing to be discharged. "I now leave it with you to turn me away *and settle our accounts* as provided in the transfer of one fifth of the concern, where it says, in case of any accident or misfortune happening," &c. In other words, you [Mr. Tudor] *may* "turn me away," as ice-house keeper, *if* you will at the same time pay me back my money, and thus enable me to wash my hands forever of you and your "concern." This is *one* of the arrangements which I propose to him, as a way whereby *he* may rid himself of *me* as ice-house keeper, and *I* may rid myself of *him* as partner.

The other arrangement which I propose, in the event of his refusing to annul the *sale*, is, "to annul the *contract* entirely." What does this mean? What is this "*contract*," which I refer to as a distinct thing from the *sale* which I have just proposed

to rescind? What is this contract, which I here propose to "annul *entirely*," that is to say, *in all its parts*? The reader of Mr. Tudor's "Memorandum of Proposal," and the matter connected therewith, cannot be at any loss to answer these questions. This "contract" is that mutual agreement upon which the sale by Mr. Tudor, and the purchase by me had taken place; that mutual agreement, which, on the one hand, entitled *me* to the administration of the ice-house at the ten per cent. compensation; and on the other hand, entitled *him* to what I had engaged to do as partner, that is to say, "*look after the business*," (in the very restricted sense in which the terms of his "Memorandum" prove that the words were used by him and understood by me,) and *occasionally visit Havana when necessary*. This is the "contract" which I here propose to annul *in all its parts*, whereby he would be left free to have always as ice-house keeper, a person to his own taste, and at such compensation as he chose to give him; and I should be left in the position of a merely dormant partner, as owner of a fifth of the concern, free to give to the business as much or as little of my attention as I myself should see fit. (m)

Such was the nature of my proposal. His reply to it, contained in a letter under date April 16, will be seen to be in character: disclaiming in smooth terms all desire to part company with me, now or ever, and all disposition to say disagreeable things; but covering his retreat by still harping upon his "instructions," which (as had been explained, and as he perfectly well *knew*) had been conformed to, strictly and literally, so far as circumstances rendered it *possible* that they should be; and in regard to which, therefore, there could be no ground for expecting but that the future would afford to his nature the same pretexts for indulgence that it had found in the past.

(m) Here, again, it will perhaps be thought that very unnecessary pains have been taken to establish the precise meaning of my letter. No one, accurately informed in regard to the nature of the transaction which had taken place between Mr. Tudor and myself, as indisputably established by his own writings, could fail to understand my letter precisely as I have explained it. This is true. But I have been led to engage in this explanation from the circumstance that this very letter has (at a period long subsequent to its date) been produced by Mr. Tudor in court, to establish the justness of his pretensions by proving that I had acknowledged his right "to turn me away" *whenever he pleased*!

Being originally nothing but "a poor, miserable carpenter," I acknowledge, without shame, great inferiority to Mr. Tudor as a scholar. At a game of letter-writing, we should be no less unequally matched than at planing a plank. Still, if any intelligent and candid person can be found, who — particularly after perusing the documents from Mr. Tudor's hand, adduced by me — will say that my letter admits of any such interpretation as that given to it by Mr. Tudor when he adduced it in evidence, *separated from all those documents* which preclude doubt in regard to its true meaning, this will prove me to be a greater bungler at the pen than even I suppose myself to be.

But for one purpose which it incidentally serves, his reply would scarcely deserve transcribing. This purpose, however, is rendered very important by his subsequent course, years after, in asserting that the agreement between us at the time our partnership was entered into, rendered it obligatory upon me to reside at Havana so long as he might see fit to require it. Upon this point, we have seen the testimony afforded by his own original "Memorandum of Proposal;" testimony so clear and so strong as to preclude all possible reply, short of an utter denial that the arrangement which took place in consequence of that proposal had any reference to the terms and conditions therein set forth. It is in regard to this point, that the present letter (written about two years after the *proposal*, and about fifteen months after the *bill of sale* whereby I became his partner) is valuable; for we have in it an incidental reference to the "Memorandum of Proposal," strongly corroborative of the fact, that, in *that* document are to be found the *true* terms of the agreement upon the strength of which we became partners.

Distinguishing (as I had done in the letter to which he is now replying) between my ceasing to be his *partner* and my ceasing to be *ice-house keeper*, he says: "I have no wish that you should leave the concern, or your present situation, until you have received the remaining two summers' sales, as was originally planned. As to leaving the *concern*, I should be sorry you should *ever* leave it." "*As was originally planned*:" When? Where? What do these words mean? Mr. Tudor's "Memorandum of Proposal," answers these questions. His whole letter, so far as it regards my proposal, is as follows:

"I have no wish that you should leave the concern, or your present situation, until you have received the remaining two summers' sales, as was originally planned. As to leaving the concern, I should be sorry you should ever leave it; but if you write me improper letters, and detain money when it is due for remittance, I shall not receive such things with calmness or kindness. I wish to say nothing to you which is not agreeable to your feelings. Neither have I done it until you positively refused [a positive untruth] the most particular instructions respecting those remittances. To avoid difficulties in future, follow instructions: Number your letters; make up accounts every month, and remit four-fifths of proceeds, or the whole, and I will do the best I can for you here; for your part choose which of these you will do, *now*, and let me know."

After discussing other matters, he recurs to the subject, and closes his letter thus: "Perform my reasonable requests and we shall get along smoothly. Neglect them, or act contrary to them, and we cannot."

About a month after, he writes : " If you follow instructions we can never have anything which is disagreeable, said or written : indeed it is impossible; Damon, for me ever to be long angry with you, because I perceive in you at all times, integrity of intention."

It is seen, that among the grounds upon which Mr. Tudor places his apologetic justification, one is, that I had written "improper letters." This is an allusion to an incident, which, as it affords an excellent illustration of his character and of his notions of justice in matters of account, will be found explained in Appendix (D.)

My letter above serves to fix the date of a pretension on the part of Mr. Tudor, which bore in its womb, consequences the most serious both to him and to me. It is here seen, that so early as the beginning of the year 1825, — before I had been a twelve-month in charge of the ice-house, under the agreement by which I had been induced to become his partner,— Mr. Tudor had already advanced a pretension, at his own good will and pleasure, to reduce my compensation of *ten per cent.* to one half the amount ; and also that he had already found a pretext for threatening to exercise this power. The nature of this pretext will be seen in Appendix (D) above referred to.

This reduction continued to be a favorite object with him. His other freaks and fancies were, many of them, as transient as they were baseless. But this one had a very substantial ground to rest upon. It was with him a very solid consideration of dollars and cents, one which, at all times, had its due weight upon his mind ; and in the progress of events this acquired so much importance as to become the chief cause of my annoyances from him, even when other pretexts were found for them, and finally the motive to a proceeding on his part whereby I was for a time deprived of my rights, but which ultimately recoiled upon his own head.

This, however, was not until long after the period with which we are now occupied ; and which, commencing with the partnership in 1824, comes down to 1830 : embracing only the years during which I was involved in the difficulties and subjected to the trials arising from the subjects of the Privilege, and the lot for the ice-house. During this period, Mr. Tudor's pretension respecting the reduction of my compensation, — which began, as we have seen, early in 1825, — was renewed ; and this being done in the way natural to his arrogant temper and dictatorial habits, it finally resulted in my giving up the charge of the ice-house, in the determination to have nothing more to do

with the business, but to wind up my affairs at Havana, return to the United States, and settle in the Western country. (¶)

This step, however, was not taken until April, 1830, subsequently to the dates of Mr. Tudor's letters, extracts from which are now about to be produced.

MISSION OF MR. HENRY TUDOR. The reader will not have forgotten the letter, under date November 28, 1829, addressed to Mr. Tudor by one "Doctor Escovedo," by whom he had "instructed" me to get a certain memorial to the Cabildo drawn up, *demanding* of that body such and such things as being required by Mr. Frederic Tudor. This epistle, although it remained without acknowledgment, was not, it seems, altogether without effect upon the liege to whom it was addressed. At any rate a change in his tone to me on the subject immediately followed, as will be seen from the following extracts:

December 29, 1829. "The difficulties which [are mentioned] in your several late letters, I am aware of, and have engaged my brother Harry to go out to Havana in the course of two weeks, to see what may be effected."

December 30, 1829. "My brother Harry will leave here for Havana in two weeks, in order to see what may be done to relieve the difficulties."

January 27, 1830. "My brother comes out to Havana with full power to act for me in all cases whatever." "The *ONE thing WANTED is the LOT*; and the lot in the Plaza San Francisco is of the greatest moment to insist upon." "I am of opinion, that if by the effort now to be made by my brother, we can lay the foundation for a new, and large, and permanent house, all question of the Privilege may subside."

Such was the change of tone in Mr. Frederic Tudor! In one respect, however, it had not changed. It is still "*we*." It is still *our* interests,—the joint interests of *me*, Frederic Tudor, and *you*, John W. Damon,—that are at stake. If the effort now to be made should prove entirely successful, then, and in that case, "*we* can lay the foundation for a new, large and PERMANENT house." It may be remarked, too, as an illustration of the absurd incongruity which shone among other properties in Mr. Tudor's views and "instructions," that, but a short time before the date of this letter, wherein he expresses the opinion that if we can but obtain a *site* for a large and permanent establishment, we need not care about the *Privilege*, he had been extreme-

(¶) The details upon this point are *highly important* to a just estimate of Mr. Tudor's entire course. They will be found in Appendix (E) and Mr Tudor's conduct will be seen to be in perfect keeping with all the other illustrations of his character, prior and subsequent.

ly anxious to form an establishment and to secure the exclusive Privilege at Matanzas; not on account of its own value, but merely as a safeguard against the possible competition at Havana from an establishment at Matanzas! (o)

Agreeably to this announcement, Mr. Henry Tudor arrived at Havana, early in the year 1830, provided with the "full powers" of his all-puissant brother. After spending several months there without any other result than that of subjecting his principal to the expense of this mission, he returned home in disgust, despairing of the possibility of accomplishing anything whatever.

It was during his visit, that, in April, 1830, I retired — forever, as I supposed,—from the charge of the ice-house. This, in its subordinate details, was provisionally entrusted to a Mr. Limbough, whose services were obtained by me for Mr. Henry Tudor. At the earnest request of this gentleman, (who always deported himself towards me as one,) I continued, for the few weeks I had to remain at Havana, to reside at the ice-house, to "look after the business," and to afford him assistance in various ways. The resources placed by his brother at his disposal proving inadequate, I advanced him money to enable him to meet a demand upon the concern, and also for purposes in which I had no interest; and I continued to devote much time and exertion in endeavoring to procure the required site and the renewal of the Privilege. In urging me to render these services, notwithstanding my determination to sever myself from the concern, Mr. Henry Tudor represented—and very truly—that my own interest required it; for not merely the current income of

(o) This was his motive for wishing to secure the exclusive Privilege at Matanzas. Under date November 25, 1825, he had written to me: "It is time to do something on the subject of Matanzas; *because it will not do to have any one else on the ground of Cuba, which might endanger Havana.*" Again, December 7, 1825: "I now enclose you my power of attorney, to act in the case of Matanzas. If you are disposed to go up there for a week, look at the ground and examine the place, also memorialize the Governor, I think it might be well. It will be necessary to ask a free lot and free tonnage, and twelve months for building the house. The object, for this year, is to *prevent interference*, and to make sober and slow preparation for commencing when we are ready."

So we see, the whole island must be occupied and fortified for the protection of the Havana establishment. No other ice-man must be allowed to set foot on the soil of Cuba, because this "*might endanger Havana.*" And yet, believe him, the exclusive Privilege at Havana was of no sort of consequence, a mere matter of moonshine!

It is to be observed, too, that on the occasions when he pretended, or fancied, that he attached but little or no value to the Privilege at Havana, because no one could successfully compete against his masterly dispositions and management, he always lost sight of the trifling circumstance, that if the Privilege were not secured by us it might be by *some one else*: in which event, his genius would no more avail than if it had always remained hid under a bushel.

It is to be observed also that these occasions were prior as well as posterior to the date of the foregoing extracts.

the establishment, but the value of my fifth was at stake. This position, however, I had every reason to consider but a momentary one; as the reader will perceive on referring to Appendix (E). He will there find the details of a proceeding on the part of Mr. Frederic Tudor, which will astonish him, unless the acquaintance he has formed with that gentleman's character have already fully sufficed to impart to his name the faculty of divesting of all wonder-exciting power, any transaction in which it may be found to figure. It will be there seen under what circumstances it was, that the post of ice-house keeper was relinquished by me in April, 1830; by what circumstances it was, that, contrary to my positive intention and certain expectation, I was detained at Havana from week to week and month to month; how Mr. Tudor contributed to this detention so far as lay in his power, by failing to redeem his positive pledge, immediately to send out to take charge of the establishment, "an excellent man," whom he had solemnly averred that he had "*ready*," in case of my refusal to submit to his terms; in a word, with what exceeding dexterity the dignified game of "fast and loose" was kept up for a twelve-month nearly; how, in August, 1830, I was induced, by a consideration of the highest moment to Mr. Tudor's interests no less than my own, to resume charge of the ice-house, at the desire of Mr. Tudor's attorneys and under an appointment from them, until he should have time to make the arrangements required by the state of our affairs; how, on the receipt of this intelligence, in Oct. 1830, he expressed great satisfaction at my being once more in charge of the establishment, and how the game of "fast and loose" was still kept up; and finally, how the sacrifice of my inclination, temporarily consented to by me in August, and whereat he had expressed his joy in October, was, in November, made the pretext for further insult and for further departures from truth, by my amiable and "munificent patron."

NEW PRIVILEGE OBTAINED. On relinquishing the post of ice-house keeper, in April, 1830, I had ceased to correspond with my partner. In the Appendix (E) just referred to, it is seen how our correspondence was renewed, through his availing himself, for that purpose, of an incident arising from the advance of funds which I had made at his brother's solicitation.

On the 23d September, 1830, he writes as follows:

"I have your several favors to the close of August. The assistance you rendered the concern in the security is good. Such responsibilities are to be entered into with caution."

This had reference to a mortgage upon some real property owned by me at Havana; which,—a mortgage of the kind

having been insisted upon by the authorities as an indispensable condition to the grant of the Privilege, — had been given by me, to secure the faithful performance of the new contract upon which the Privilege was founded, and particularly the penalty of \$4000, therein stipulated for, in case of a failure in the supply of ice for the space of twenty days. (*p*)

By this expression of his thanks, — in the “good,” laconic form appropriate to his lofty, imperial nature, — for the last service rendered by me in securing the Privilege, by obviating the only remaining obstacle to the grant of it, Mr. Tudor is seen to express very decidedly, although impliedly, his satisfaction at the event, and his approbation of the terms of the contract; in regard to which, down to the minutest details respecting the hourly progress of the business, he had been kept advised from day to day. This fact is to be borne in mind, with reference to an approaching outbreak of Mr. Tudor’s nature.

In the Appendix (F) will be found some of the very numerous details respecting the progress of the business; showing how, after the Privilege had been consented to and granted by the authorities, and after the terms of the contract had been agreed upon and settled, our interests were still kept for several months in imminent jeopardy, chiefly through Mr. Tudor’s extraordinary conduct, (if indeed, the epithet be applicable to aught coming from *him*,) in not replying to the communications addressed to him by the House, which, at the earnest solicitation of his brother, had consented to attend to this business for him. Whether this indecent return for their kindness, — which, agreeably to the received standard of civility, would have been devoid of all decency, even if they had stood towards him in the mere relation of ordinary commercial correspondents, having no claims upon his *gratitude*, — whether it be ascribable to a deliberate *game*, having for its object to avoid committal and to leave himself free to adopt or to reject their acts according as his ultimate election might be to avail himself of them or not, the reader will judge for himself. If he come to the conclusion that this is the proper explanation of Mr. Tudor’s course, he will be able to refer to the *game* depicted in the Appendix, (E) as affording at least a presumption that another simultaneous *game* may, without injustice, be believed in.

Referring to the Appendix (F) for the details in regard to the business of the contract, I will here confine myself to the outlines of the matter.

(*p*) This mortgage will be seen to play a conspicuous part in the events of 1837, as the basis of an exceedingly clever (I say nothing of its other properties; leaving it to the reader to find names for them) stratagem on the part of Mr. Tudor.

In the month of June, 1830, Mr. Tudor transmitted his power of attorney to Messrs. Scull, Storey & Co., who, as has been already stated, had yielded to the earnest request of his brother, by consenting to represent him at Havana, in regard to the pending application for the Privilege, which, at the request of the same gentleman, I had undertaken to renew and to follow up during the short period I then expected to remain in the island.

On the 14th of August, the grant of the Privilege received the sanction of the Intendant, the last of the authorities whose concurrence was requisite. They had, however, refused to grant us a lot, as had formerly been done; and we were left to procure one for ourselves. This constituted one of several features in the aspect of affairs,—as this varied from day to day,—which induced Mr. Tudor's representatives to postpone the formal execution of the contract until they could learn his views regarding these collateral matters. For this reason, the subject was kept in that state until near the close of the year, at no small risk of a revocation of the grant in our favor, and its being transferred to some one else; for the authorities could not but consider it as most extraordinary conduct on the part of Mr. Tudor, that, after having been importuned for years by him, through a succession of representatives, and after having finally granted his petition, and after the terms of the contract had been agreed upon and settled, their acts should be treated with so little ceremony as he showed by not coming forward and formally binding himself in the mode required by law. Nor could the gentlemen who had (to their great regret, as they now felt,) committed themselves by a promise to the imperial gentleman's brother, be otherwise than sensible of the unpleasantness of the position which they, as the immediate actors in this very equivocal proceeding, were thus made to occupy in the eyes of the authorities and of all the persons whose influence in our favor had been enlisted, whether by my exertions or through their own disinterested kindness. Counting upon immediately hearing from Mr. Tudor, they postponed the subject,—as they at first took for granted,—but for a few weeks; and when this expectation was disappointed, every revolving day seemed only to bring with it a stronger and stronger assurance that the suspense in which they were kept must certainly terminate with the next arrival.

Thus was this state of things protracted from day to day till near the close of the year; at which period, Mr. Tudor's attorneys (most heartily wishing that they had never placed themselves in any such predicament as that of having anything to do with him) came to the conclusion, that, even independently of other considerations, the only safe course for his interests was,

to execute the contract in the form required by law. This was accordingly done on the 16th of December, one of the last of the business-days of the year. After its expiration, a new set of men would come into office, in some branches of the administration, and their concurrence in the grant would have to be obtained; indeed the whole labor of obtaining it would have to be commenced anew. And, under such a state of facts as this case would have presented, had the year been allowed to expire leaving the thing undone, what man (unless indeed Mr. Tudor's own courage had been equal to the undertaking) would have had the face to present himself before the authorities, old or new, with a prayer for another grant of the Privilege to the same individual? — the very same individual who, after putting them to all the trouble which his importunities had caused, and after obtaining their favorable action in his behalf so far as to leave nothing to be done except his formally binding himself to what had been by himself proposed, — had failed to redeem such a pledge!

In this contract, obtained, — as the reader who may have had the patience to follow me thus far well knows, — chiefly by my exertions and through my agency, the name of my partner alone appears. It was executed by the attorneys of Frederic Tudor, Esquire, and in his name solely. To this, several causes conspired. One was, that having, — for the second time, and forever, as I firmly believed, — retired from the post of ice-house keeper, and hoping to extricate myself from the partnership, by the disposal of my share to Mr. Tudor, I deemed it best that the matter should not be complicated by the insertion of my name in the contract. But the chief reason, — although I was unconscious of it at the time, — was, that although Mr. Tudor had treated me, as I conceived, with great injustice, that injustice had thus far consisted mainly in unmerited insult, and, so far as money was concerned, in appropriating to himself things which a man of his temperament might sincerely *fancy* to be rightfully his. I had as yet no conception of the lengths to which his injustice (I give it this name — the reader can add such others as he may deem appropriate) could be carried, nor of the magnitude of the scale upon which it was capable of influencing his conduct. I yet remained in the dark as to the meaning attached by him to the words "I sell." It was not until long afterwards, that I became enlightened upon this point, and was informed that his "*Memo-randum of Proposal to Mr. J. W. Damon,*" and the document written by him to carry into effect my final acceptance of the terms of that Proposal, *meant nothing*, — or at least, had no meaning in the law; that my ownership of any share in the concern was "es-

essentially founded on your [my] residence in Havana ;” and that (putting out of view the question as to his possessing any right whatever to reduce *my* compensation) if the inadequacy of the compensation which he might please to grant to the ice-house keeper, or the vexations to which he might please to subject him, should render the post intolerable to me, and I should see fit to retire from it, still I must continue to *reside at Havana*, as the only alternative to forfeiting the share which my money had paid for; nay, that by merely presuming to contest the point with Mr. Tudor, all my interest had become forfeit.

All this I had yet to learn; I was without the remotest conception that it was among possible things that Mr. Tudor should ever take the ground above described, and go far beyond it even, (if, indeed, greater or less be applicable to distances both immeasurably great,) by denying, in the face of his own repeatedly written words, that I had ever been his “partner,” or ever the “owner” of a share in the establishment, or ever anything more than a mere “*agent!*” And, therefore, without any objection on my part, Mr. Tudor’s name alone was inserted in the new Privilege, — that Privilege which had been earned by my exertions and *obtained by me*, as the reader well knows; and which did, by every conceivable title of right, belong to me in the proportion of *one fifth*, as truly as it belonged to him in that of *four*.

Thus much in regard to the Privilege and contract. I must now recur to a collateral subject, and take up the thread of events connected with the post of ice-house keeper. In the Appendix (E) already referred to, this subject is presented in the order and detail requisite to afford a conception of the nature of Mr. Tudor’s course with respect to it. I will here take it up at the point where that account of it closes, to state, that, on receipt of Mr. Tudor’s letter of Nov. 22, 1830, I immediately made arrangements for again retiring from the ice-house, and then replied to him as follows:

Dec. 20, 1830. “Your duplicate of the 22d Nov. was received a few days since, in which I perceive you have expressed yourself in a strong manner. I have nothing to say at present to the above mentioned letter, only to the latter clause, where you say that I had turned out, without authority, a very excellent man, &c.; in answer to this clause, I refer you to your letter of the 26th August last.

“The man is replaced, as per your order, and enters on his duty to-morrow; and I am to take passage for the United States in a few days.

“The accounts are brought up to the close of this day.”

Thus, then, did I again find myself in the position which I had

assumed early in the year, with the intention of departing immediately for Boston ; that position which would have been assumed at an earlier period still, but for the dignified game of "fast and loose," [see Appendix (E)] so adroitly played by my partner; that intention which he, — in utter disregard of his own repeated and most positive assurance respecting the "excellent man, ready" to be despatched to take my place, — did all that lay in his power to defeat. In one respect, however, my position was now different from what it had been when first assumed. The Privilege had been obtained, and the contract securing it had been executed. This motive, therefore, no longer existed for my permitting any "off and on" game to control my wishes and intentions. Accordingly, I sailed forthwith for Boston, in the expectation of receiving from Mr. Tudor, the money he owed me; in the hope that he might be induced to re-purchase my share in the concern, to which the new Privilege had now imparted a substantial value; and in the firm belief that, at any rate, I had bid a final adieu to the post of ice-house keeper, and that, even if he should refuse to sever our connection as partners, by buying me out, I should never, except as the mere owner of a share in the concern, have anything more to do with him. (q)

Mr. Tudor's November outbreak was followed by a still more violent (or at least more wordy) one in December. This, the last of the letters written by him that year, did not reach Havana until after my departure. In the conferences which followed my arrival at Boston, it was never mentioned by him, (although he was perfectly aware that it could not have reached me) nor did its existence become known to me until after my return to Havana. Had it been received in time, it would have spared me all further connection with the writer; and, taking him at his word, I should have gone into the business on my "own account."

The determination formed by me about a year previously, to wind up my affairs at Havana and quit the country, had been caused by disgust at my situation as Mr. Tudor's partner. The building in which our business was carried on had gone to ruin;

(q) In all this, I was, — as will hereafter be seen, — counting without my host. The first item in my calculation proved altogether fallacious: *I could not get my money.* As, in regard to the settlement of our accounts, Mr. Tudor generally saw an absolute necessity that I should make the voyage from Havana to Boston; so, to receive the money due me, I had to go back from Boston to Havana. I had to content myself with an order for the amount, (\$6255) to be paid out of the income of the establishment; and this, too, under circumstances which placed me under the absolute necessity of increasing the debt, of raising and advancing more money still, as the only alternative to allowing the whole concern to go to the dogs, and totally losing my property in it, besides the only chance of ever recovering the money which was to be paid me out of its income. All this will be seen in the proper place.

its removal had been required by those who had a right to require it; for years past every possible endeavor had been making, but without success, to obtain the Privilege and a site for a new house; and these sources of trouble, discomfort, and despondency, great enough in themselves, were immensely aggravated by the character and conduct of my partner. Sometime previously, it had been proposed to me, to wash my hands of Mr. Tudor and his concerns, and form another connection for obtaining the Privilege and carrying on the business. Had I felt at liberty to accept this proposal, I should most gladly have done so, at the sacrifice of that "fifth part" in Mr. Tudor's "concern," the value of the whole of which would have been reduced to *nothing*, had the Privilege been obtained by the party from whom the proposal came; which I believe it would have been, had I accepted. The only thing wanting to the immediate organization of a company, with abundant capital and no lack of friends or influence, was my consent and coöperation, and my services as manager of the business after the Privilege should have been secured. But, notwithstanding all that I had suffered at Mr. Tudor's hands; and although my engagement with him had been, not to *procure* the Privilege for him, but to enjoy, as part owner and managing-partner, my share of that which he professed to own; notwithstanding all this, I did not consider it consistent with good faith, that I should abandon his interests in the way proposed, and concur in the measure of securing the Privilege to his exclusion.

All these causes combined had induced the above mentioned determination on my part, to wind up my affairs and leave the country; abandoning Mr. Tudor's "concern" to its fate; my own fifth of it, of course included, unless he should be disposed to purchase it of me. But, at the date of his present letter, (December 10th, 1830,) these causes had in a great measure ceased to exist; the Privilege, so long withheld, had been granted, and the prospect in regard to obtaining a suitable site had so cleared up as to justify confident hopes of my being able to secure one, (which, indeed, I should have recently done, but for the—I do not know what epithet to attach to it—*game* played by my partner.) To these changes in my position, his letter put the finishing stroke, by refusing to accept the Privilege just obtained; and notifying, that he dissolved all connection with me of every kind, and left me at liberty to offer for the Privilege on my own account; in other words, that he had taken the law into his own hands, and *nullified* every right acquired by me under the *bill of sale*; confiscating to his own benefit that property which I had bought of him in its non-existent state, and to which my exertions had at length imparted substance and reality. Had this letter,

therefore, come to hand *in time*, I should, without a moment's hesitation, have taken him at his word. Instead of going to Boston, (where, contrary to my expectation or wish, an arrangement took place between us, which, as the event proved, was to serve no other purpose than as a new starting point for the repetition of his old line of conduct,) I should forthwith have signified my readiness to engage as partner and manager with others, — persons against whom the competition of Mr. Tudor for the Privilege would, I entertained no doubt, be as fruitless as all the efforts which he had been making for seven years had proved. Indeed, his next intelligence from Havana would probably have been, that, in view of his extraordinary course on the subject, [see Appendix, (F)] the contract which he had permitted to remain so long unexecuted after it had obtained the assent of the authorities, had been granted to others.

But most unfortunately for me, his letter was written *too late*. It reached Havana after my departure for Boston, and lay there unopened until my return, after having contracted a new engagement with Mr. Tudor; or, correctly speaking, after the withdrawal of his pretension, and the restoration of things to that *ten per cent.* footing, which had all along been the real and sole cause of all the venom which his bosom had distilled for me; and the cutting down of which had all along been *the end aimed at* in all the quarrels which he had eternally been in quest of pretexts for. Thus much I have been led to say here in regard to an event which properly belongs to a subsequent period. Mr. Tudor's letter is as follows:

“BOSTON, December 10th, 1830.

“MR. J. W. DAMON. Sir,

“It is to be determined by the lawyers, whether the dissolution of connection in the ice business took place when you determined on not fulfilling your contract with me, in the case of Matanzas. Whether your connection might be terminated at the end of the old contract with the Government; and, in short, whether it has not been at my option to terminate it at any time when your want of correct proceeding should justify it.

“However these questions may be settled, I wish now to notify you that I do not accept the new contract for supplying Havana with ice. That I shall offer for a new one, at three cents the pound; and give you liberty to offer at the same time for a contract on your own account.

“I also notify you that I dissolve all connection with you of every kind, and hold you responsible to me for the whole loss which may arise on account of the Matanzas business: for a breach of orders, and entering into contracts not authorized, build-

ing an ice-house, &c. not authorized, all of which will be made to appear in a suit to be commenced against you in our courts here. (r)

"I am your humble servt.,

FRED. TUDOR."

Among other precious things in this letter, as evidences of the writer's character, the most prominent of all, perhaps, is his notification that he does "*not accept the new contract for supplying Havana with ice.*" This contract, which he does not "*accept,*" being nothing more nor less than the contract closed and concluded some five months before, and just executed in his name. That same contract, which, after seven years of toil and vexation on my part, under his sovereign "*instructions,*" had been obtained in August; and (after its formal execution had been most inconveniently delayed several months, owing to his peculiarly liberal views respecting the bindingness of solemn engagements,) had, about the time his letter was despatched from Boston, been formally executed in his name, by his attorneys, Messrs. Scull, Storey & Co., under a power *sent to them with a special view to its execution!* This is the contract which Mr. Tudor, having altered his mind, has determined not to "*accept!!*" (s)

(r) For the *rationale* (or what, to the reader's mind, may possibly prove a sufficient explanation) of this "*suit,*" so suddenly resolved upon, I will refer to law books, under the head "*Set-Off,*" and to the Appendix (E) towards the end. The whole will be found particularly deserving attention from any one at all curious respecting my partner's character, and the merits of his resolves and conduct generally, whether in regard to the bringing of suits or other matters. Towards the end, however, are some facts bearing especially upon the present point, to wit: 1st, *That I was the holder of certain promissory notes of Mr. Frederic Tudor*; 2d, that just before the November explosion, of which the above is but a sort of after-clap, *he had received notice that I should want my money in December*; and 3d, the state of his exchequer was such as *to render a notice of the sort particularly unpleasant.*

The last of these facts, already stated in the foregoing note, (g) will come to be more particularly set forth in its proper place, among the events of the year 1831; where it will be seen to have exercised no small influence over the determination in which I had left Havana, never more to have anything to do with the management of the ice house, nor with Mr. Frederic Tudor, except so far as my mere ownership of one fifth of the establishment might render unavoidable.

(s) It is to be observed, too, that, even *after* the final assent of the authorities to this very contract, according to the terms proposed by himself, had been made known to him, he had, as we have seen, written his letter of 23d September, thanking me, — *after his fashion* of acknowledging a service, — for the mortgage offered by me (and accepted by the authorities) in order to remove the only obstacle on their part encountered by his attorneys in fulfilling the purpose for which his power had been transmitted to them, to wit: the prompt closing of the contract, the instant it might be — if ever — assented to by the authorities.

And *why* does he not accept? What is his objection to the contract?

The only objection of which his letter affords any indication is, that it is *too favorable* to him. The only particular in which he intimates that his "*new one*" is to differ from the one just concluded is, that the former shall limit the price "*at three cents the pound,*" instead of six, at which it had been selling for many years, and which was the limit named in the latter; leaving us, of course, free to reduce it as much below that as we pleased.

Another of these precious things is, that Mr. Tudor has determined to have it settled by "the lawyers," — meaning always, by *law* as contra-distinguished from *equity*, — whether it had not been optional with him to "terminate" my connection with the ice-house "at the end of the old contract with the Government." The "old contract" here referred to being that *non-existent* contract, that *nothing*, under the name of "any Privilege," which, (connected with an old decayed tumble-down frame house, standing upon a few square feet of ground held by a lease at will, under the certainty of being at no distant period ordered off,) he

Let this be noted. And now, to another fact: the very last "instruction" written by him, in regard to the terms of the contract, was under date June 15, (the contract was closed in August, though not formally executed till December,) and related to this very point, — the *price*. It is as follows:

"I think any offer to sell ice below 75 cents the *arobe* (3 cents a lb.) ought not to be made. But as low as that, — *tonnage free*, — it will rather be for our interest to sell, than at a higher price. *This* [that is to say, the *expediency* of reducing the price from six to three cents,] we can determine upon at a future time. It will be best *not* to propose this reduction if it is not NECESSARY." [That is to say, if it be possible to secure the contract without proposing it.] Such was his very last "instruction!"

In what light is it to be considered, when seen in connection with this non-acceptance of the contract? Is it to be considered as merely a piece of imperial inconsistency, or as a piece of deep calculation, — a deliberate move in the game [see Appendix (F)] which had been kept up by Mr. Tudor with reference to the formal execution of the contract? So far as his present letter is to be looked upon as an expression of his real intentions, his course amounts to this: at the *twelfth* hour, he steps forward from behind the scenes, and presenting himself *in propria persona*, he says to me, "you have succeeded in bringing the authorities to consent to the grant of the Privilege; I now disavow your acts, and thrust you from all participation in it." And turning to the authorities he says, "my agents have obtained this Privilege on terms not so advantageous to the public, by one half, as those on which I was desirous of obtaining it. I will now proceed to the formal execution of the same contract, at *half price*; in the clear understanding, however, that whatever interest my agent, Mr. J. W. Damon, may have had in the business heretofore, I now dismiss him from my service, and he is not to have any whatever for the future."

Is his June "instruction," when taken in connection with this December *denouement*, to be viewed as stamping the piece with the properties of *farce* or with those of *tragedy*? Is it all mere childish folly? Or was the June instruction written in this design, and for this very purpose: the purpose of his being furnished with this "three cents" title to the *whole*?

The reader must judge for himself. One thing he cannot have failed to see long ago, too clearly for doubt, that my partner's course, from beginning to end, from the moment I became his partner down to the present, is indicative of a violent and incessant conflict in his bosom between a most conscientious conviction of the value of my services and their indispensableness to the prosperity of his exchequer, and a no less conscientious self-reproach for allowing himself, — whatever his arithmetic might say on the subject, — to be parted from that dearly beloved money, at which his arithmetic would keep insisting upon it that those services were cheaply bought. Deeply convinced as he was of this truth, it was, nevertheless, endless torment to him, (although in the nature, somewhat, of a *remittent fever*) to think that so much money should be diverted from his exchequer; above all, to serve so base and illegitimate a purpose as that of raising to pecuniary independence an ignoble, "poor miserable carpenter," who did not "know how to spend it like a gentleman."

had sold me "one fifth part of" for the sum of "six thousand dollars!" This is the "contract" which Mr. Tudor, the *legal* Mr. Tudor, has the conscience to refer to, as the one, in regard to which "the lawyers" are to determine whether it be not the only one in which I could have acquired, on the 29th January, 1824, an interest "in consideration of six thousand dollars!" And what is the time chosen by Mr. Tudor for making this display of his affection for *legality*, — as contra-distinguished from *equity*? Why, at the end of seven long years, — a term so long as actually to have caused him to forget *his own position* at the beginning of it, — at the end of seven long years, during which I had been engaged in an incessant struggle in the defence of my own and Mr. Tudor's interests (in the proportion, however, of one fifth to four fifths) against the consequences of *the want of a contract*!! Such is the golden opportunity, selected by Mr. Tudor's good genius, for this happy exhibition of his protégé's attachment to LAW!!!

§ 5. — 1831. — *My visit to Boston, January 1, 1831, and its unexpected result. — New Document from Mr. Tudor; its nature considered. — His Diplomacy; acknowledgments contained in his Proposals. — The state of his Exchequer, and the consequent necessity of my return to Havana for an indefinite period. — Mode in which the money borrowed of me was repaid. — Intrinsic value of this payment considered. — His last move in the Game commenced by him in 1829, respecting my ten per cent. compensation. — His letter of March 23, 1831; accuracy of his portrait, as painted by himself. — My return to Havana, April, 1831.*

UNEXPECTED RESULT. I arrived at Boston early in January, 1831; and from the following document, dated 28th March, of the same year, it will be seen that my visit resulted in a manner very different from what could be anticipated by any one after perusing my partner's last letter. (t) All the positive determina-

(t) And, — it may be added, — very different also from what could be anticipated by any one apprized of the determination on my own part, in which I had repaired to Boston. How my determination came to be so widely departed from, will be seen in the sequel. It will be seen that, on this occasion, as on all occasions since, yielding to his importunities, I had taken the fatal step of becoming his partner, I found myself so entangled in Mr. Tudor's meshes that there was no escape. The force of circumstances compelled me, not only to continue to be his partner, but to resume the management of the business at Havana, as the only alternative to the almost certain loss of my property.

I must beg that the reader who may be disposed to judge harshly of me, for not long ago *breaking* with the imperial gentleman, will advert to this *force of circumstances* at every moment since our association began.

tions announced therein, proved as fleeting as they had been sudden. I heard nothing of his non-acceptance of the new contract; nor was I made aware of the fact, that, ever since the 10th day of December, "all connection of every kind" had ceased between Mr. Tudor and myself. On the contrary, the favorite object of reducing my compensation to one half of what I had a right to, was abandoned, and I returned to Havana to resume my post under the new Privilege upon the old footing.

" *This* INDENTURE of two parts, made by and between Frederic Tudor, of Boston, and J. W. Damon, late of Boston, and now resident in Havana, in the island of Cuba, WITNESSETH: 1st, That J. W. Damon is to return to Havana and take charge of the ice-house and ice concern, and conduct the business to the best of his abilities, in good faith, for the concern. 2d, It is agreed, on the part of said Tudor, that the said Damon is to have the same compensation, and on the same conditions as appears by his, said Tudor's conveyance of one fifth part of said ice-house, dated January 29th, 1824. 3d, It is agreed said Damon is to make up and forward the accounts of sales of ice, at the close of each and every month, and remit (*u*) the amount due the said Tudor in good bills on the United States, if they can be obtained on better terms than specie remittances; and, if not, in such specie as can be had; unless otherwise ordered by said Tudor. 4th, That the extracts from the sales are to be forwarded, as usual, every ten days, and the ten per cent. on the gross sale includes all charges whatever for the services of said Damon. 5th, The disbursements in Boston, including those of the present year, are to be paid in Boston, out of the proceeds of the house, by remittances in all May or June, previous to other payments.

" In witness whereof we have interchangeably signed our names, at Boston, this 28th of March, in the year 1831.

FREDERIC TUDOR.
J. W. DAMON."

Here, then, we have another document written by Mr. Tudor; and, in this document, very obvious and very strong corroboration of the correctness of the results of the examination bestowed, on a former occasion, upon the *bill of sale*, to ascertain its true meaning in regard to questions which might arise con-

It will be seen, however, that, strong as it was on the present occasion, it had not the power to make me swerve from my determination *not* to recognise Mr. Tudor's right to reduce my compensation.

(*u*) Note particularly this phraseology. It is said, "and remit;" not "*and then remit*." On this point, see particularly a preceding note, (*k*); and a succeeding note, (*w*), the "satisfactory bonds" impertinence; and also a subsequent note, (*d*).

cerning our respective rights. We here see, in this renewed agreement, — or, more properly speaking, this declaration of the continuance of our former agreement and contract, — that I was “to return to Havana, and take charge of the ice-house and ice concern, and conduct the business to the best of my abilities, in good faith, for the concern ;” and that my compensation was to be the same as formerly agreed upon. We see also, that Mr. Tudor expressly stipulates for the punctual performance by me of certain things which he had accused me of neglecting. But we see no stipulation in regard to his *great point*, — the point to which, as the reader has seen, all his movements, however, widely asunder at their origin, converged, — that point at which he had always arrived, no matter where he had started from, no matter what had been his pretext for quarrel. We see no assertion, express or *implied*, of his right to reduce my compensation ; nor of his right to deprive me of the charge of the ice-house and the management of the business, a share of which I had been induced to become the purchaser of, upon the solemn pledge from him, that its management, at that compensation, should be mine so long as I might choose to retain it.

If it be objected, that neither is there any stipulation containing an express acknowledgment of my rights in regard to these points, I will answer, that the nature of my position respecting them *did not require any such stipulation*. Our respective positions in this respect were totally different. Mine essentially was, as it had from the beginning been, a position of *possession and resistance*. I had acted altogether upon the defensive. Mr. Tudor's position, on the contrary, was that of *claim and attack*. He had asserted a right to reduce my compensation. It has been seen how this assertion was met by me, when first made, in 1825 ; and also, when last made, in 1830. On both occasions, I refused to acquiesce in its exercise. On the latter, its assertion had been coupled with new rules and regulations, framed under the power of “instruction,” (a wanton abuse of it, rather,) reserved to him by our contract, and had come as the crowning work of a long series of annoyances that had made my position intolerable. For this reason, enforced by others arising from the state and prospect of our affairs at that precise juncture, I had seen fit to retire from it, without entering into any discussion. We have seen what a game was played by him during the whole preceding year, (1830) obviously with a view to shake my determination not to acquiesce in the exercise of his pretended right. The *sequel* of this game remains to be seen. Here, however, as the *final result* of it, we see him, under his own hand, and without any reservation or protestation, restoring

the post to me, upon those original terms which I had refused to acquiesce in any change of.

MR. TUDOR'S DIPLOMACY. Besides these important features in the document embodying the *result* of my visit to Boston, I have to point to some important circumstances in the *negotiations* which preceded that result.

Our final agreement, of the 28th of March, was preceded by sundry negotiations; (v) consisting of various proposals from Mr. Tudor, (still in my possession, written and signed by him) and of my replies. He at first pretended to be,—perhaps he really believed himself to be,—absolutely inflexible, in the determination that I should never more be ice-house keeper, unless I consented to the reduction of my compensation from ten to five per cent. (w) “Very well, Sir,” (the reader will read-

(v) In all these negotiations, as will readily be imagined, I was altogether passive, and Mr. Tudor was the mover. I had gone to Boston, not to *negotiate*, but to make a *final* settlement of accounts with Mr. Tudor, and *receive my money*, to wit: the amount of his promissory notes for money borrowed of me, together with such further amount, if any, as might appear due to me for money advanced or over-remitted. I *had retired from* the post of ice-house keeper *forever*, as I thought. But Mr. Tudor, although his “determinations” and his conduct had been the cause of my retirement, thought differently. He, as the event proved, had not the least idea of allowing me to give up that post; he was too close a calculator, and knew his own interests too well. All he had an idea of was, to *play a game*,—a game which should induce me to acquiesce in his pretended right to reduce my compensation. Conjecturing, in regard to me, by what he knew of himself, he doubtless took for granted that I also was playing a game. All the moves, however, were on his part; and when he found that they were all without any effect, he,—on the eve of my departure for Havana, in quest of (or, more properly speaking, to *earn* for the second time; to *lose* or to *secure* by new and important services) that money which he could not pay me at Boston,—made his last move, the nature of which is seen in the above result of all this diplomacy.

(w) This “inflexible determination” of his, he seemed to be in constant dread of my forgetting. One might have supposed that the attitude which I had so quietly assumed and maintained on the subject, would have sufficed to quiet his anxiety that I should perfectly understand him upon this point. But no! Every occasion was used for reminding me that he was not to be moved. Witness the following conclusion of a note, under date Feb. 7, 1831, upon points which really had to be adjusted and settled between us:

“Whether you take charge again may remain subject to future agreement. *It may, however, be understood that I shall NEVER allow more than five per cent. on gross sales, and your servant's pay and support. And to any one else more than two and a half per cent, and half what you charge for servant.*” [In regard to this charge for servant, see Appendix (E), and the “dog-meat” difference in Appendix (D)].

So, two days before, he had, to some *pertinent* points, added the following *imper-tinence*:

“3. It is to be determined what is to be done about the ice-house keeper. Mr. Damon may resume charge—the whole charge—at five per cent.

“4. If Mr. Damon resume charge, *he is to give satisfactory bonds* to settle accounts every month, and remit the balance to F. Tudor

“5. Whether the servant of J. W. Damon is to be charged to the ice-house in whole, or for the part service which he renders.

“6. Whether J. W. Damon is to allow anything for his house and homestead of [at] the ice-house, and lessen expenses. Economy is the order of the day here, and must be practised in Havana.”

ily answer for me,) "he is no longer ice-house keeper, and has no desire to be. He retired from the post a year ago, and would have retired sooner, had you but fulfilled your pledge, to despatch your 'excellent man, ready' to take his place." During the time that this inflexibility was evinced, or pretended, he presented, under date February 5, 1831, a proposal, of which the following is part:

"If he [J. W. Damon] decline *to be ice-house keeper*, at what rate will he *undertake to look after the interest of the ice-house*, and the whole business, dropping the intermediate house, and having none but himself to look after the ice-house business?" My reply was, that I would not listen to any such proposal; that if I were to have anything to do with the management of the business at Havana, it should be on the very same terms, and none other, that had been originally agreed upon; upon which terms, the reader does not require to be told, I was *entitled* to retain the post, had I seen fit to continue in it.

In the above passage, we have, it is seen, a very explicit, although incidental acknowledgment of my right, not only to decline to continue ice-house keeper, but also to decline "to look after the interest of the ice-house." (x) It will be seen hereafter,

Let the reader turn to Appendix (E), and pronounce how far, considering the attitude in which I then stood, the above was consistent with even *self-respect* on the part of my high-souled "patron." Considered in another point of view,—as modifications of the terms on which I had held the post,—it will be seen, on turning to the "indenture" of March, 1831, that my patron was graciously pleased to omit them, "*satisfactory bonds*" and all.

Another instance of this solicitude to keep me thoroughly imbued with a sense of the unchangeableness of his determination, will be noticed further on.

(x) This right, it is to be remarked, does not at all conflict with the obligation I had originally contracted, *occasionally to visit Havana*, "*when necessary*,"—an obligation which, it will be recollected, is stipulated for in Mr. Tudor's "Memorandum of Proposal," of the year 1823. These occasional visits were stipulated for with reference to the contingency of my declining, at some future period, to continue to be ice-house keeper, and ceasing to reside at Havana. The "necessity" was, of course, to *depend upon circumstances*; and the sufficiency of the circumstances to create it, at any time, was manifestly a point upon which neither of us had a right to judge, to the exclusion of the other. If we could not agree in regard to it, the right of difference was precisely the same in each.

If, after ceasing to reside at Havana, I had seen fit, for objects purely personal to myself, to pass the winters there, and had claimed the *per diem* stipulated for, with respect to those "necessary" occasional visits, Mr. Tudor would have had the right to contest my claim, on the ground that these visits were not *necessary*, so far as the state of our joint business was concerned. On the other hand, if, when it should have pleased me no longer to hold the post of keeper, but to be at Boston or any where else, Mr. Tudor had seen fit, through any one or more of those motives so copiously supplied by his nature, to "order" me to repair forthwith to Havana, I should have had a no less clear right to doubt the necessity, and to ascribe the "order" solely to those propensities natural to a cousin of King Henry VIII. It is to be remarked, too, that the existence of even this limited obligation (one never disputed by me) might have been deemed very questionable, to say the least, *after* he had arrogated to himself the right to deprive me of what our agreement had given me the assurance of.

that his conduct at a subsequent period (1835) was put upon the ground, that he possessed an absolute right, not only to deprive me, whenever he might choose, of the custody and management of the ice-house, and to reduce at pleasure my compensation, but also to require me to *reside* at Havana, for the purpose of looking after the business, whether it might or might not be his pleasure that I should be ice-house keeper! And further, that my one fifth part was absolutely forfeit by my presuming to question this right, and to fail to yield instant compliance with his "order" to repair forthwith to Havana and enter upon the performance of my alleged obligation!

Another proposal followed, under date February 7th, 1831, containing, among other things, the following:

"Your interest at Matanzas being accepted, as agreed and understood by me, at two fifths, I acknowledge the one fifth interest at Havana to be entire."

In this, two things are to be noted; the one, on account of its bearing upon Mr. Tudor's subsequent pretensions specifically; the other, on account of the illustration it affords of his character and conduct generally. The first is the *fact*, that he here acknowledges my fifth interest at Havana "*to be entire*;" meaning by "*entire*," not that it was *arithmetically so*,—for this is a point upon which no question ever had, or ever has been raised,—but that it was *unconditional, complete, perfect, and permanent*, beyond his power to weaken or to modify in any way. This is the meaning which, agreeably to its own power, and agreeably to every principle of interpretation, we must attach to the word. This is the *fact* acknowledged by him. (y) The second thing to

(y) To appreciate the full bearing of this acknowledgment upon Mr. Tudor's subsequent pretensions and conduct, it is important that the precise nature of my position at this moment be adverted to. Peremptorily refusing to acquiesce in the exercise of his pretended right to reduce my compensation, I had retired from the post of ice-house keeper; in the intention never to resume it, never more to have anything to do with the management of the business at Havana, and to quit that place so soon as I could wind up my affairs there.

On this occasion, Mr. Tudor is seen to avail himself of the precariousness (as he fancied it) of my title,—in *law*, as contra-distinguished from *equity*,—to the fifth interest at Havana. He applies it to the purpose of extorting from me the acceptance of two fifths, as my share in the losing Matanzas concern; because it had been "agreed and understood by" him, by his own imperial self,—superior to all such vulgar rules as, "it takes *two* to make a bargain,"—that this was to be my share. If I should be so contumacious as to demur to this allotment; why, then, he would deprive me of my Havana fifth until I could establish my right to it by a law suit. But if I would submit in regard to Matanzas, why, then, he would remedy the apparent weakness of my Havana title, by an acknowledgment that it was in truth perfect.

The alternative to this acknowledgment, as expressed in his own words, written two days previously, is as follows:

"The *sine qua non* of any amicable settlement consists in placing the Matanzas

be noticed is, the *condition* upon which he agrees to acknowledge this fact. It is, that I should "*accept*" my interest at Matanzas at two fifths. This Matanzas concern, (which by the way, had proved a losing one, else Mr. Tudor might perhaps not have recollected so distinctly and positively, that he had "agreed and understood" that I was to be owner of two fifths of the same,) this Matanzas ice-house had no more to do with the rights acquired by me in that of Havana, than had the ice-house recently established by Mr. Tudor at Calcutta. And yet, we here see him inadvertently *recording with his own pen* the fact, that he had been holding out the threat that the truth here acknowledged by him, in regard to the nature of my interest at Havana, should be denied and contested at law, unless I consented to pocket two fifths of the loss resulting from his Matanzas outwork for the protection of Havana; (2) an establishment, any difference regarding which,—whatever might be the right view, either in equity or in law, of the question whereon it turned,—could not possibly have any imaginable connection with the nature of that interest at Havana which he had sold me years before the events that he believed, or pretended to believe, gave him a right to insist now upon my being the owner of two fifths of the recent and exploded concern; and which I believed gave him no such right. (a)

Even putting out of view the peculiar circumstances under which I had consented to become the owner of my Havana interest, and under which, after being purchased, it had been earned, or created rather, by my exertions and toil; putting all this out of view, and considering the *bare fact* of that purchase, agreeably to the true character of the transaction, as determined by what the reader knows with respect to the meaning and interest

affair right. This not being admitted, *all* rights of Mr. D. are to be adjusted by law; and *all* right to *any* interest of J. W. Damon is *denied*. If he has none in Matanzas, the lawyers are to determine whether he has *any* in Havana."

Let it be noted, too, that this *sine qua non* covers the whole ground. It applies to "*any* amicable settlement;" that among others, of Mr. Tudor's promissory notes, for money borrowed, and kept in his hands in the way that has been.

Such is the use made by him in 1831 of his 1824 *bill of sale*. The reader will now suppose that the weapon then lost its edge and temper, and became forever after harmless and unfit for the purposes of oppression, even towards so defenceless a thing as "a poor, miserable carpenter." He will take for granted, that my partner, having on this occasion *acknowledged* my "one fifth interest in Havana to be entire," (and consequently that his threatened denial that I was the rightful owner of "*any* interest" would have been *untrue*) can never again even so much as *threaten* the same thing. He is mistaken. He will, in 1835, see the same weapon resorted to. And this, for the purpose of extorting my acquiescence in his pretended right, not merely to deprive me of the post of keeper, but to *require me to reside at Havana*, whether ice-house keeper or not!

(2) See a subsequent note, (c).

(a) For an explanation of the subject, see Appendix (E.)

of the parties at the time; and in what light does the present conduct of Mr. Tudor present itself? To what just man,—supposing him ever so conscientiously convinced that he was clearly and unquestionably in the right with respect to a distinct subject of difference,—could the thought have occurred of adopting the course which we here see pursued by my partner?

I say, what *just* man; but I can go much farther. I can allow him to be very far from a just man; to be anything short of one utterly reckless in his disregard of the plainest dictates of justice: and still the question will admit of but one answer. He may be one, in whose eyes “the end justifies the means;” and even this will not suffice to make him sanction the conduct in question. Broad as the maxim is, and numberless as are the misdeeds which it shields from opprobrium, there are others which it leaves bare to the lash of universal scorn; and to this class, so far as I can judge, does that conduct belong. ‘The maxim lends itself to those cases only, wherein a just end cannot, from the nature of the subject, be effected by just means. Requiring as it does, that the end be a just one; and sanctioning the resort to illegitimate means solely when a necessity for them arises from the nature of the subject; it joins in the condemnation where this plea cannot be interposed. Far different was the nature of the case before us. Had Mr. Tudor’s Matanzas pretension been a just one; had he been sincerely convinced of its justice; had he not been conscious, that, measured by his own favorite standard of right even,—the *law*, as contra-distinguished from *equity*,—it would prove wanting: where would have been the necessity for a resort to the means used by him to enforce it? (b)

(b) The character truly belonging to it, the motives which could alone have made him insist upon it as a “*Sine qua non* of any amicable settlement,” and his consciousness of those motives, are made still more flagrant by the amount of money involved in this difference between us, as compared with the amount of my money then in his hands, as money *lent* and *advanced*, chiefly the former, for which I held his promissory notes.

The amount lost in the Matanzas establishment (which, after two years’ trial, was at this time given up for a bad job; and upon which, therefore, there was no risk, no possibility of further loss,) was \$3307.69. This is the sum, two fifths of which,—that is to say \$1366,—he insisted upon my consenting to lose. On the settlement, to which this consent was made the “*Sine qua non*,” and which took place immediately after, the amount acknowledged by him to be due me was \$6255. Before the extortion, the amount of my money actually in his hands was, therefore, \$7621. Now, under such circumstances, what would have been done by any tolerably “fair” man, impressed with the conviction that he had a right to insist upon my incurring that loss? Why, he would have deducted the amount from my \$7621, and paid me the balance: leaving me at liberty, if I thought the deduction unjust, to establish my right at law.

This,—unless I greatly mistake with regard to the established standard of ‘ordinarily fair,’ or even of “prime middling,” in the classification of “dealers,”—is the fibre which would be expected in any man pretending to pass under that denomina-

To this extortion,—as I most firmly did then, and do still, believe it to be,—I submitted: not for the purpose of conciliating him; not with a view to securing his favor, or to continue a connection which his injustice had made hateful to me; but as a means to an end the very reverse of this. It was a sacrifice of money to what had been, for upwards of a year, the great object of my aspirations: a final settlement with, and entire deliverance from him. For this, had I adopted the step of retiring from the charge of the ice-house; and in the confident expectation of completely effecting it I had arrived at Boston. In regard to the mere relation of *partner*, it would perhaps be impossible to wash my hands of him; but in regard to the relation between him and myself as ice-house keeper, which had been abused by him in the way that the reader has some conception of, the thing was, I flattered myself, *done*. I had refused to acquiesce in that encroachment upon my rights which, ever since our connection was formed, had been with him the great end to be effected; and by putting an end to the relation to which those rights had reference, I had relieved myself from the necessity and the duty of standing out for them. After this, every point between us was a mere question of dollars and cents; in which sacrifices on my part to the greed displayed by him, so far from possessing the character of unmanly concessions, incompatible with the maintenance of a proper independence, were stamped with the contrary character, as the purchase-money paid for its more prompt and entire enjoyment. Had the position which I then occupied towards him with reference to the post of keeper, been other than what it was, sacrifices of the sort might have borne the semblance of concessions to secure his favor, or at least, to secure my continuance in that post; which, except to one acquainted with the truth of the matter,—which no one in the world was, beyond our two selves,—I would have seemed to owe to his favor. But, my position being what it was, there was evidently nothing to afford ground for any such imputation. There was nothing bearing the remotest semblance to a favor, which I had to wish for at his hands: except, indeed, in a sense of the word corresponding to that in which a person, beset by an importunate beggar, or subjected to any other pest, has a favor to receive in exchange for the money that buys his release.

With reference to gaining this point, Mr Tudor's game was not skilfully played: for it was so managed as to leave me completely in the dark with respect of what was to follow. The great

tion. But what does my "patron" do? He threatens to hold on to the whole; and not only this, but to confiscate my share in the Havana establishment, unless I agree to his exaction! And this is *his* standard of a "just generosity!" [see his letter of March 23, on a subsequent page.]

object with me was, to accomplish my riddance, to get my hands washed clean of him : to settle accounts, receive my money, and engage in some occupation in which I should be free from such harassment as, for seven long years, had come as the daily reward and solace of my mental anxiety and bodily toil. Acquiescence in his exaction seemed the only condition to this state of freedom. *He had not informed me*, that, even striking off the \$1366, his debt was to be paid in the way that will presently be seen : a mode of payment that had the effect of dispelling all my visions of liberty and repose, and again chaining me to the oar.

Nor was this the only point thus gained. In the settlement of our accounts, he insisted that for the period (nearly five months) of the preceding year, intervening between my temporary resumption of the post of keeper, and my second retirement, [see Appendix (E)] my compensation should be only five per cent. instead of ten. Here were several hundred dollars more, to be added to that "sine qua non," \$1366. But, although no one acquainted with the facts of the case [see the Appendix just referred to] could have hesitated to award it to me, and not it alone, but a heavy indemnity besides, for my detention at Havana ; and although my *legal* right to both might have been established by the testimony of his own attorneys, (very different persons from himself,) yet I felt at the moment too happy at my supposed riddance of Mr. Tudor and all his works, to think of going to law about two or three hundred dollars. And so I allowed the petty sum, though rightfully mine, to remain in his pocket, in company with other sorts of [see Appendix (D)] "cabbage" commissions. (c)

(c) No one acquainted with the facts of the case, as set forth in Appendix (E) with regard to the manner in which my retirement from the post of keeper had been delayed by Mr. Tudor's own course of proceeding, would believe it possible that even he should have advanced such a pretension. And yet, it is a fact, that he began by insisting that I was not entitled to more than five per cent. *for the very period* during which my retirement had been thus prevented ! To this fact, I invite the particular attention of any one desirous of understanding Mr. Tudor *thoroughly*, of fathoming his "just generosity" in its deepest depth. Let him study my partner's game of "fast and loose," as depicted in the Appendix just referred to ; and then let him connect with it this new fact.

But, where is the proof of this fact ? How are we (the reader will say) to be made to believe that Mr. Tudor ever advanced any such pretension ? Here is the proof, in his own handwriting, under date February 7, 1831.

"I understand Mr. Gardiner [Mr. Gardiner of Maine, through whom he communicated with me], to say that you *think yourself entitled to claim* the ten per cent. on the gross sales during the time you were in charge of the house. *In order* to bring matters to an amicable conclusion, I am willing to *allow* the ten per cent. until Limbough took the place, but after you turned him out, five per cent."

Here, then, is the proof of the fact ! The very phraseology, too, used by him in withdrawing this pretension, is precious. He understands that I "think" myself "*entitled to claim*," and he is "*willing to allow*." He makes a concession of his own rights ! Here, then, besides the proof of my fact, is Mr. Tudor's standard of *right, of justice, of honesty* !

Under date February 26, 1831, there came another proposal containing the following offer:

"I will sell you *another* fifth interest in Havana for twelve thousand dollars, *on the condition of your residing in Havana and looking after the interest of the concern there.*" (d)

This offer was declined by me. But the scrap of paper on which it was written has been rendered by my partner's subsequent course, quite a valuable little piece of property. In the first place, the word "*another*" expresses pretty significantly and positively, the fact, that *then*, (to wit: so late as February 26, 1831) I was considered by Mr. Tudor as the actual owner of *one* "fifth interest in Havana." I do not mean, in the whole city of Havana, but "in the ice-house and its appurtenances, together with the like proportion in any privilege from the Government of Havana." In the second place, the proposed "*condition*" expresses pretty significantly and positively, that Mr. Tudor did *not* then consider me under any obligation, as owner of that *one* fifth, to "reside in Havana, and look after the interest of the concern there." (e) And in the third place, the *sum* for which Mr. Tudor proposes to sell this "*another* fifth interest," speaks pretty significantly and positively in regard to his estimate of the value which the "concern" had acquired under my management, as compared with that which it had possessed at the time of my purchase. In some respects, that value had decreased: the house had gone to utter decay; and the necessity for obtaining a new site, then prospective, was now become immediate, absolute and urgent. We were, to all intents and purposes, without either house, or ground to build a house upon. And, supposing the latter point should be secured, still the two objects could not be expected to be accomplished for much less than \$20,000. The immediate necessity for so large an expenditure could not but operate most adversely upon the value of

(d) On this occasion, Mr. Tudor's sleepless solicitude for my welfare generally, and his anxiety that I should not suffer for want of a clear understanding of his fixed resolve in regard to the post of ice-house keeper, manifest themselves in the following addition to his offer. [The reader will not fail to observe that, respecting the *sincerity* of the opening asseveration, all room for doubt is precluded by the uniform course of Mr. Tudor's acts upon the subject.]

"Respecting the immediate charge of the sales, [i. e. the post of ice-house keeper,] *I am indifferent* whether you take it or not. In case of this purchase, *your* interest to take it will be increased, because you save in your pocket, instead of paying out, another fifth of the expense of ice house keeper.

"*I will not again consent* to your taking the immediate charge on any terms than a positive engagement to settle up every thing, and *remitting* [remit] *every month*, when remittances shall be to be made, after cost of new house is got through with." On this last point, see a preceding note, (u), and the references there made.

(e) And yet, in 1835, he assumed the position that my right to this identical *one fifth* was "*essentially founded on [my] residence in Havana.*"

our property; which, in fact, consisted of scarcely anything except the Privilege. And yet, according to Mr. Tudor's estimate, that value was now double what it had been when he had sold me my fifth! This increased estimate could not but be founded upon Mr. Tudor's knowledge that a great change for the better had taken place in some one or more other particulars. What were these? They may be summed up under one word: **SECURITY**. Our business stood, at length, upon a secure footing. We were no longer exposed to the effects of competition; and, far more important still, we were now safe from the danger of *exclusion*, through the grant of the Privilege to some one else. And this, Mr. Tudor owed to that substantial *reality*, which, as the fruit of my seven years' toil, now occupied the place of that "*any Privilege*," whereof he had sold me a part, and by the sale of which he had placed me under the necessity of obtaining this for *him*, as the only alternative to the loss of my all.

STATE OF MR. TUDOR'S EXCHEQUER. The chief object of my visit to Boston was, as the reader knows, to come to a final settlement of accounts with Mr. Tudor, and receive the money which he owed me, including the amount of those promissory notes, the payment of which he had been so liberal as to offer, about a year before, not to insist upon making then, provided I would be content with receiving *five* per cent. interest, instead of the *six* at which he had borrowed the money; those same notes, my notice regarding which, at the close of the year during which he had thus generously relieved me from the difficulty of finding an investment for my money, had elicited, — or, at least, had been followed by, — that November explosion, [see Appendix (E)] wherein my notice was responded to by a notice to prepare to answer for my misdeeds in an action for damages.

If this was the substitute at that time intended for the payment of my money, my partner had altered his mind by the time the adjustment of our accounts was effected: the substitute then tendered by him, and accepted by me, being first a bill, and then an order, upon his agents at Havana, Messrs. Scull, Storey & Co. The latter, under date March 22, 1831, read as follows:

"Gentlemen: After payment of the current expenses of the ice-house, and my bill in favor of Mr. J. W. Damon of 25th February ulto., for \$1792,37½, please pay him from time to time, (that there may be proceeds in your hands) the further sum of \$4463,34, and charge to account."

This was the way in which those moneys which Mr. Tudor had so kindly condescended, in case I should not want them, to retain a year longer, at 5 per cent., were paid to me at the expiration of that year, when I did want them. It may, perhaps,

strike the reader as a question not altogether impertinent nor devoid of meaning, *how much this bill and order were*, under the circumstances, *intrinsically worth*? Considering the exact state of our affairs at Havana at that moment — the new Privilege, with the penalty of \$4000 attached thereto; the decayed house, standing upon public ground, which we had been peremptorily ordered to demolish and remove the rotten materials of; the *no* lot to build another house upon, and all the difficulties which had, down to this moment, prevented our obtaining one, after seven years' incessant exertion on my part, supported by all the friends whom "a poor, miserable carpenter," could be supposed capable of having, acting in concert with all those powerful influences which it naturally pertained to one moving in my partner's elevated sphere, to possess the faculty of setting in motion; the certainty that, even if these difficulties should immediately disappear, and a suitable lot be obtained, an outlay of something like \$20,000 would be indispensable before the lot could be made available for storing and vending ice; — taking, I say, these things into consideration, not to mention contingencies of all sorts: *how much would any sensible Boston capitalist have given me for my prospective \$6255*? Or, to state the question in another shape, *what is the lowest premium at which the most liberal and venturesome Boston insurance company would have consented to "take the risk," and insure me the ultimate payment; say, in one year, or two, or three, four, five, six, or any reasonable number of years*? Possibly some mathematician, skilled in the calculus of probabilities, may consider the problem a good one for the exercise of his powers.

Whatever the solution may be, one thing is very clear: *I had to go back to Havana for my money*; and, when there, I must engage anew in the exertions I had been incessantly engaged in for seven years, for the benefit of Mr. Frederic Tudor's four fifths, in company with my own one fifth, or Mr. John W. Damon would incur no small risk of losing his \$6255, over and above the loss which might attend the reduction of the value of the whole "concern" to \$4000 less than *zero*, through the want of an ice-house in which to carry on the business and fulfil the contract: which penalty of \$4000, it is to be recollected, was secured by mortgage on the individual property of said J. W. Damon. In other words, though I was no longer to fill the post of ice-house keeper, — my determination having proved less variable than the resolves of my partner, — the strong law of self-preservation would compel me to exert myself as much as ever, in all main points; that is to say, in *all* points excepting only the *proper* duties of the ice-house keeper; those duties,

which, it will be recollected, constituted the only duties which I had expected or engaged to perform when I accepted the post at that ten per cent. compensation which my partner, or "munificent patron and generous benefactor," had, from the moment almost of my commencing to receive it, been intent upon confiscating one half of, — by way of beginning, — as his "remedy" for my neglect of instructions. With these duties I had determined to have nothing to do, directly or indirectly, unless I should continue to be myself charged with them *on the terms originally agreed upon*. And this determination, — formed, as has been seen, for the first time, early in 1825, and for the last time, early in 1830, — had not undergone the slightest change.

My partner would, it is true, have all the benefit of my services *for nothing*; a benefit which the reader will think he very little merited. This, however, was a thing which, under the circumstances in which I stood, could not be avoided without a total sacrifice of my property, earned by the sweat of my brow, through long years of toil and suffering of every description. But what did depend upon myself was, to acquiesce or not in his pretension to reduce the compensation which our agreement had assured to me; and which, even if this had not been the case, the *extra* services rendered by me would, unless I greatly deceive myself, have been considered by any ordinarily just man as most richly entitling me to, in a way no less strong than that in which our compact did entitle me to it. This did depend upon myself, and my determination in regard to it was unwavering. The force of circumstances might compel me to give him, *for nothing*, the most important of my services; but my services as ice-house keeper, I was determined he should not have at half price, nor for one cent less than what I was entitled to, and would have been entitled to, even if no extra service whatever had been rendered by me. In the aspect *then* presented by our affairs, I had, at the commencement of 1830, preferred to retire from the post, — indeed, I had been positively glad of the occasion for retiring, — rather than engage in a legal controversy respecting my right to retain it on the terms fixed by our subsisting agreement. Under the then existing circumstances and prospects, *the appurtenances* to his "any Privilege," — which had always constituted its sole value, — having almost entirely lost the little they had ever possessed since I had acquired an interest in them, and the moment being at hand when the remnant was to vanish into nothing; whilst the chance of my ever being able to accomplish either of the several things requisite to impart to "our concern" a substantial value, seemed to be the slightest: under those circumstances and prospects, my fifth share in this *next*

to nothing, was an object of so very small value, that, — although fully aware that the chance just referred to would, in all probability, vanish altogether upon my retirement from the post of ice-house keeper and from the scene of action, — its sacrifice, together with that of my *ten per cent.*, presented but a very inconsiderable drawback to the advantage of an early deliverance from my partner. In *that* state of things, I had preferred to retire rather than engage in a controversy where “the game would be not worth the candle.” I was sick of the connection; and the great object of my desire being to wash my hands of it promptly, I had but little disposition to stand out for trifles. Since then, the state of things had materially changed. It had indeed, in regard to all points upon which the value of the concern depended, become totally reversed. Still, having, at the beginning of 1830, elected to retire from the post, I chose, at the beginning of 1831, to maintain the same position, notwithstanding that the alteration in the state of things presented strong inducements for a change. These inducements were very strong. What, in January, 1830, was a trifle too insignificant to be made the subject of contention, or to be permitted to retard, by an hour, the day of my deliverance from Mr. Tudor, had, before the close of the year, — thanks to the final success of my exertions, — become an object of value, highly worth struggling for. One great point, — the Privilege, — had been gained; and the other, — the site for a new house, — I had confident hopes of effecting: indeed, things had now come to that pass, that I *must* effect it, or incur the heavy loss of upwards of six thousand dollars in cash, then due me, besides the value of my fifth of the Privilege, and the \$4000 penalty, secured by mortgage on my property. And not only did this change of circumstances present strong inducements to a change of my attitude in regard to Mr. Tudor’s pretension, but it afforded strong arguments of equity and justice, in addition to those previously existing, — which, however, required no strengthening, — to determine me to such change, and induce me now to assert and maintain my *right* to the management (upon the terms originally fixed) of that business, upon the successful conduct of which I had so much at stake.

Nevertheless, I did not change my position; and I was about to depart from Boston, in March, 1831, to occupy at Havana the same relation towards the ice-house and the management of its business, that I had assumed on retiring from the post of keeper, in April, 1830, with this difference, however: that, whereas I had, on that occasion, yielded to the earnest solicitation of Mr. Henry Tudor, and consented to remain in the establishment during the few days I expected to stay at Havana, and assist

the person in whose charge it had been placed, I was now resolved that nothing should induce me to have anything to do with its management.

In this state of the case, I was about to embark; the delivery into my hands of the above order of Mr. Tudor upon his agents being, as I supposed, the final transaction between us. I went into the country on a leave-taking visit to my parents and friends. On my return to Boston, four days after, I found there a letter addressed to me by Mr. Tudor, on the day subsequent to that on which he had written the order just mentioned. This induced me to call upon him; (I had not supposed I should again have any occasion to see him, nor had I the slightest desire to do so,) and my determination being, on that occasion, once more manifested, he, to my no small surprise, — for I did not then suppose he had been, to the last, playing a game, — expressed the wish that I should, on my arrival at Havana, resume charge of the establishment on the old terms! Thus, at the eleventh hour, — or according to real time, “on the stroke of twelve,” — did his “inflexible determination” to swallow one half [by way of first dose] of my *ten per cent.*, as his “remedy” for relieving me of my imputed disease, and rendering me less prone to disobey instructions; thus did that “inflexible determination” melt and evaporate under the beams which suddenly broke forth from his “generosity.” My “munificent patron” could not bear the thought of my returning to Havana, at *no* compensation whatever: rather than this, he preferred to overlook my obdurate ingratitude in refusing to be ice-house keeper at *half* compensation, and that I should continue to receive the *whole*. For the sake of effecting my cure, he was willing to swallow the half; but as I had proved so refractory a patient as to refuse to allow him to take *any* unless he took *all*, his humanity would not allow him to incur the risk of killing me by such an over-dose. This, doubtless was the consideration that governed him at this crisis. If there be any so ignoble and low-minded as to be unable to perceive in my partner’s course aught but an overpowering conviction that it was all-important to his interests that the post of ice-house keeper should be filled by me, I can but say to all such, that the incapacity to comprehend the motives which govern the conduct of “gentlemen,” as contra-distinguished from “poor, miserable carpenters,” is a natural misfortune, — and consequently not a just subject of reproach, — of all base-born men, whose notions have not chanced to be elevated through the happy chance of having come in contact with, and imbibed the spirit of, some “munificent patron.”

Such was Mr. Tudor's last move in the game, the nature of which had, as we have seen, been the subject of his studies and meditations from an early period in our partnership. Had my situation at the time been different from what circumstances beyond my control had made it, even this backing-out, — to use a vulgar phrase, appropriate to carpenters' vocabulary, — of Mr. Tudor would have come too late. I had retired from the keepership, in the intention *not* to resume it, whether Mr. Tudor should or should not recede from his pretension. Upon this determination, I had so far acted as to make no proposal to him, nor to take any step whatever to induce him to reconsider the matter; and I should have continued to act upon it, even when he offered to retrace his steps, but for the peculiarity of my position. This, however, was too critical, and the amount I had at stake too considerable, to allow me, in justice to myself or to those having claims upon me, to reject the *only* means, perhaps, — certainly by far the best *chance*, — of making myself safe. To reject Mr. Tudor's offer would have been to make a greater sacrifice to my own personal inclination and comfort than I considered it right to make. And thus it was that I was induced once more to subject myself to the discomfort inseparable from any such relation towards Mr. Tudor.

Upon my acceding to this proposal, Mr. Tudor wrote, under date March 28th, the document above given, (see beginning of the section,) and also the following letter to Messrs. Scull, Storey & Co.

"Gentlemen: Having settled and adjusted satisfactorily all matters with Mr. J. W. Damon, I wish you to deliver to him the ice-house and charge of all my affairs relative to the business.

"He resumes his situation again, and will account with me directly, without paying over to your house (*f*) the avails of the house in San Francisco square, or the house I have in contemplation to build."

I will now give the letter (omitting only some calculations, possessing no interest) addressed to me by Mr. Tudor, under date March 23, which, as has been stated, proved to be the over-

(*f*) In plain English: [see Appendix (E)] although Mr. Damon receives for his services no more than that same *ten per cent.*, at which I was very happy to secure them, and to pay besides to others, a commission of two and a half per cent. for keeping and remitting the proceeds; and although whilst *he* was not in charge of the ice-house, I preferred to pay that commission rather than trust so delicate a business to the person in charge; yet, now, as he is to take charge again, I think it as well to save that per centage to my pocket.

ture to his backing-out, or retraction. It will be found quite in character, commencing with a picture of the writer, which, in most eyes, will constitute quite satisfactory proof that the "moral mirror" wherein this gentleman is in the habit of studying his features, possesses a virtue corresponding with the property of those material looking-glasses which reflect every thing upside down,—houses balanced on their chimneys, whilst these rest upon a foundation of air; and men walking with their feet to the ceiling, in comfortable contempt of the vulgar proneness to fall. No less true to nature is the following portrait of my "munificent patron:"

"BOSTON, March 23, 1831.

"MR. J. W. DAMON.

"It has been a uniform custom with me to *repay* valuable services, at a higher rate than it would be in my power to *command* them. (g) No man who has ever been in my employ can, I think, say otherwise.

"In your case, I have exceeded my rate of *favor*, (h) above any other man whom I have ever employed; and except in the case of the Mantanzas business, I have not had reason to believe my confidence has been ill-applied. And, as in that you have retraced your steps, (i) your aberration from correctness in that case is healed.

(g) How perfectly this applies to my case, how strictly true it is respecting the course of my "patron" towards me, the reader does not require to be told. If his memory need refreshing upon this point, he has but to turn to Mr. Tudor's proposal of May, 1823, to his bill of sale of Jan. 1824, and then trace the events of even the first twelvemonth of our partnership. In the *first* document, he will note the evidences with respect to Mr. Tudor's conviction regarding his "power to *command*" my services at a lower rate than he offered; as, in the haste evinced by me to avail myself of the offer, he will see proof that the proposed compensation was unnecessarily liberal. In the second document, he will note the "rate" at which Mr. Tudor *engaged* to pay for my services, as *ice-house keeper* merely. In the events of the first year, he will see the "rate" at which I rendered service, and the "rate" at which Mr. Tudor "repaid" me by *largesses* of all sorts, including that threat to confiscate one half of my stipulated pay, which bears date Feb. 8, 1825,—when I had not yet been so much as *eleven months* in possession,—and is the first recorded proof of his discovery of this invaluable "remedy" for ice-house keepers' diseases.

Happy Mr. Tudor! If it be true, that to "know thyself" be the *ne plus ultra* of human wisdom, who can doubt, that, before painting the above portrait, you had attained to the highest pinnacle of her temple?

(h) This, no doubt, may be taken as a sample of the assurances from—or assurance of—Mr. Tudor, on the strength of which the public have been led to associate my name with ingratitude, faithlessness and dishonesty, whilst my "benefactor" enlists its sympathies as a sufferer through the "generous confidence" and "just generosity" which belong to his nature.

(i) The reader has seen under what circumstances, and from what considerations, my share in the Matanzas concern was "accepted at two fifths;" this acceptance being what Mr. Tudor here means by "retraced your steps."

"If you had adopted a reasonable course of advancing your condition, I think you would have accepted my proposition of \$12,000, for another fifth, (to be at your option to give it up in two years) and receiving five per cent. as keeper of the house.

"But you have not been willing to advance yourself reasonably. I have now only to say what I think I have a right to expect, and do expect, on your part: a general supervision of the business. (*j*) It is my intention it shall be well conducted *here*; and when the time arrives that ice shall be sold in Havana at three cents, then, the conducting *here* will be in fact the main security of the business. [He had long ago said that it *was* so already.]

"If it be true that for ten years, and during the time that you have been employed by me, I have treated you with a just generosity, (*k*) you have (now that you are independent) (*l*) to make me a *just* return; and in our separation from my immediate control over you, I trust and hope you will bear in mind how I have exercised that control; whether to your injury or your benefit.

"Postscript. I suppose it is understood that I take back my proposition of sale of a fifth; if you do not so consider it, you will now."

Immediately after the arrangement of which this letter was the precursor, I departed for Havana, where I arrived about the middle of the ensuing month.

(*j*) "A general supervision of the business." The reader knows in what sense of these words Mr. Tudor had any right to "expect" any such thing of me. He knows, that, — supposing the course taken by Mr. Tudor not to have forfeited his right to expect *anything* of me in this respect, — the utmost extent of my obligation was to visit Havana "when necessary;" and that this obligation could not be in any respect enlarged by the circumstance of my happening to be in Havana. Wherever I might be living, I was not under any obligation whatever to Mr. Tudor, to give any portion whatever of my time or attention to the affairs of the ice-house, except only under such circumstances and on such occasions as would have rendered it "necessary," — in the fair and equitable sense of the word, — for me to repair to Havana from Boston, had I been established and doing business at the latter place. And this necessity, fairly interpreted, must have had reference to the business of the ice-house, and not to subjects incidentally arising and collaterally connected therewith: Such as the Privilege, the lot for an ice-house. &c. No one, on perusing Mr. Tudor's "Memorandum of Proposal," could hesitate to say, that such subjects as these were *not* comprised in the field of obligation to which that stipulation had reference.

(*k*) "A just generosity!" In what *one* particular had his conduct not been the direct reverse of what the commonest justice, — to say nothing of generosity, — rendered imperative? Can the reader name one single exception?

(*l*) "Now that you are independent," quoth Mr. Tudor. J. W. Damon is "*now*," — having retired from the charge of the ice-house, — "independent," *as the owner of one fifth of the concern*. This, and the date, the reader will please store away, together with the other things of the same sort already noted, for comparison with what the future is pregnant with, and will in due time bring forth.

§ 6. — 1831–33. — *Site for the Ice-House obtained. — Its nature. — Conditions attached by Government to the permission to build. — New Ice-House built. — Breach of faith on the part of Mr. Tudor in regard to the Cost. — Difficulties with which I had to struggle whilst building the House. — Want of Funds. — Mr. Tudor's dunning for Remittances. — His Coffee and Sugar Speculations. — Ill Health compels me to leave, July, 1833. — Mr. Tudor's subsequent "Generosity" on this subject.*

SITE FOR ICE-HOUSE. Having, at the end of March, settled with Mr. Tudor in the way we have seen, I was, by the middle of next month, back at Havana. There, as may be supposed, the first subject that occupied me was, to procure that site for a new house which had constituted the chief object of Mr. Henry Tudor's mission, "*the one thing WANTED*," and in regard to which our affairs, notwithstanding that the grant of the Privilege had been obtained, yet stood in a situation that every revolving day rendered more critical.

The matter being now left in my hands, untrammelled by Mr. Frederic Tudor's endless "instructions," I proved more fortunate than Mr. Henry Tudor had been, or than I had myself been whilst endeavouring to fulfil, — so far as common sense would allow such an attempt to be made, — the mandates of his imperial brother. The most advantageous site that the city afforded was obtained by me, — one combining every possible advantage, as well for the receiving of ice from the ships bringing it from the North, as for its sale. (*m*) With a view to subsequent events, it is necessary that its precise nature, and also the terms upon which it was procured, should be explained.

The city of Havana is entirely surrounded by a massive wall of hewn stone, constituting the face of a regular fortification; which, on the water side, rises from below the surface of the bay. Adjacent to this wall, and between it and the yard-wall of a house belonging to the Marquis Villalta, was a small space of public ground, held by Don Francisco Seydell, as tenant at will under the Government, and occupied by fishermen and others as his under-tenants.

This piece of public ground offered a particularly advantageous site for the vending of ice, because of its immediate proximity to the fish market, — which is resorted to chiefly at the same hours of the day at which ice is sent for by the families in the

(*m*) This site might have been obtained in 1830, and it would have been then secured by me, at a considerably lower price than it ultimately cost, but for the *games* [see Appendix (E) and (F)] in regard to myself and to his attorneys, then playing by my partner.

habit of using it,—and its vicinity to the chief public square, and the principal coffee houses and confectionaries. It was no less advantageous in regard to the landing of ice from vessels, provided permission could be obtained to receive it from the lighters at that spot; in which case, it could be hauled up directly from the lighter into the house. To obtain the use of this site, four things were requisite: permission from one Department of the Government to occupy it in the mode and for the purpose contemplated; permission from another Department, that the ice might be received in the way proposed; the relinquishment of Don Francisco Seydell's right, and the consent of the Marquis Villalta to the construction of the proposed edifice. These four things were effected by me; the consent of the Marquis was granted; the relinquishment of Seydell's right was purchased for the sum of \$ 3,500; and the Government granted the requisite permission upon certain conditions, similar to those upon which Mr. Tudor had originally obtained permission to build, and which he had made so light of, after once getting that "possession," which, "in a Spanish country, is *more* than nine points in the law." One of these was, that the building should be of wood, except on the sides adjoining the stone walls of edifices already existing; another, that it should not be used for any purpose whatsoever except an ice-house; another, and the most important, that whensoever the Government should require its removal, it should be demolished and removed, and the ground should be restored to its original state, all at the expense of the grantee.

NEW ICE-HOUSE BUILT. Having thus secured "the foundation for a new and large and permanent house," I went to work, and erected the edifice. This, it will be recollected, is the same "new house," provided for in Mr. Tudor's "Memorandum of Proposal," of the year 1823. It will be recollected, likewise, that he there pledges himself, that the new house shall "be built at the expense of *my* [Mr. Tudor's] four fifths, *your* [J. W. Damon's] one fifth, instead of paying, is to be made up by your attention to the erection." But although my "attention" *was* given "to the erection," and not my attention only, but the work of my hands also, and although the funds even had to be raised by me, yet my *one fifth* was taxed with its proportion of "the expense," amounting to nearly \$ 17,000. (n) Its right to

(n) I think I may venture to say, that any competent judge of such matters, well acquainted with me, would experience no hesitation in saying, that, taking all things into consideration, the cost of the building was, no doubt, from one fourth to one third less than it would have been, if erected by contract, or by an agent equally competent with me to conduct such a work, in all respects except only experience in Havana affairs and dealings connected with business of the sort.

be exempt was not "nominated in the bond." Moreover it was an *old story*. Since Mr. Tudor had given this pledge, some nine or ten years had passed over; a term long enough to render even a debt at law, — particularly as contra-distinguished from *equity*, — no longer binding. Besides, during this long interval, had I not been in the quiet enjoyment of all the pleasures and comforts resulting from the peculiar position of Mr. Tudor's house and business, under his "any Privilege from the Government of Havana?" And, among these pleasures, had there not been that of giving to the old house, lest it should come tumbling down about my ears, my daily "attention," and the frequent work of my hands, to say nothing of the constant drain of *my* money, in company with that of Mr. Tudor, for repairs? And having, during so long a period, been left in the quiet enjoyment of such an habitation, instead of being subjected to the discomfort of living and carrying on the business, in that "new house," which Mr. Tudor had promised to build at his sole expense, — surely, it would have been most unconscientious in me, and a gross abuse of his "just generosity," not to consider such a favor a sufficient "set off" to the claim of my one fifth to be exempt from assessment. (o)

(o) As a specimen of the pleasantness of my situation, the following details, copied from two of my letters to Mr. Tudor, will suffice. The reader will not have forgotten, that so early as April, 1834, [see a previous note, (i)] Mr. Tudor wrote, "the house, you know, is very rotten."

Nov. 5, 1829. "On the night of the 3d inst., the rain fell in torrents; in consequence of which a part of the house next to the fountain, rather towards the south west corner, fell down, and a quantity of coal ran out, to the amount of several cart loads. On the south side, the whole length of the old part of the house is so pressed out, that I fear it will fall also. The rain appears to have softened the ground, and the props given some at the bottom; besides which, the boards are so rotten that they are giving way between the joist. When it clears up, I shall try to patch it; but every thing is so rotten, that there is no such thing as driving nails so as to hold."

Nov. 11, 1829. "On the night of the 6th inst., we had another tremendous fall of rain; and the south side, already said to have swelled out, and fear expressed of its falling, gave way almost the whole length at the bottom, and considerable coal ran out at several places."

"The day following, I made all possible diligence for permission to repair; no one seeing fit to give the permission until the Comisario del Barrio went with me to the Governor, and after stating the difficulties, the Governor said that the plan for the new house was now drawing, and things would be ready soon to commence it; but, for the preservation of the ice until the new house was built, the present house might be repaired. On Monday, commenced repairing. To show why I sought this permission, I transcribe the 31st Article of the Bando de Buén Gobierno." [Here followed the article, prohibiting under severe penalties all repairs to any edifice, without permission.]

"When the part was taken down, to put up anew, I found the middle post and all the studs rotted entirely off up to the girders, and the corner posts were very rotten; but I dare not prove them, to see to what extent, for fear of accident. When that side is done, I think it may do very well for some time if nothing happens to the shaving space. The next place that looks likely to give way is on the

DIFFICULTIES, WANT OF FUNDS, &c. — Such was the *result* of this particular matter. Although the reader is by this time pretty well acquainted with Mr. Frederic Tudor, he will be apt to suppose, that, considering all the circumstances under which we then stood, I must necessarily have been allowed at least to build the house in peace and quiet. Comparatively speaking, it is true that I was left free from annoyance; but that I was so only in the comparative degree, will be seen from the following extracts.

In less than a month after my departure from Boston, Mr. Tudor writes post haste, “via New York,” to inform me :

April 25, 1831. — “My Court street building is now nearly done, and I have already nineteen tenants; but the bad part of it is, that Mr. Pratt’s estimate, which was \$16,000, turns out \$30,000, and I think will reach \$32,000. You can hereby easily understand how *inconvenient to me has been your withdrawing your money at this time.*

“On the 30th June, I have some considerable payments to make; and therefore I beg of you to be particular to *send forward the remittance* for the ice disbursements, so as to be here on or before that time.

“Advice about the lot, &c., I shall like to hear: but I confess, my disbursements have been so heavy in Court street, I shall still prefer to go along, *poco a poco*, in disbursements for that object, if possible.”

This shows how delicately considerate my “patron” was, in regard to all matters touching his own convenience and revenue. “How inconvenient to me has been the withdrawing your money at this time!” “But, unfortunately, my money had *not* been withdrawn; nor was it likely to be, until I should have *made* it, by an operation, the first step of which would be to raise some \$15 or \$20,000, — partly from the ice-house income, which Mr. Tudor’s fingers are still itching after; and beyond that, by such ways and means as I could contrive, — and sink them in an establishment for carrying on the business in.

west side. If that should give way, it must be very bad, as there are no shavings, and that part of the building is of hemlock, and was put up in the spring of 1823. The red cedar posts which were left to support the plates of the inside frame are decayed, and worn at about six feet from the bottom to the size of a man’s ankle; and the middle post, supporting what was formerly the east gable-end-plate, now become a beam, is broken in the mortice where the girders tenanted into it, and sprung out of a straight line several inches.”

These were the circumstances, — *in addition* to the state of things in every other respect, — under which it put Mr. Tudor “beside himself” that I should be so irreverent as to believe it necessary to commence a new building so soon as a lot should be granted, or at any time until it should suit *his* convenience! — he, at this very moment, finding it convenient to apply the funds derived from Havana to the erection of an additional ice-house at New Orleans, whereby to augment his revenues.

"The remittance for the ice-disbursements," which he begs me to be particular in sending forward with all despatch, is a sum of \$2000, which it had been agreed between us should be transmitted by me from the first *net* proceeds of the establishment, to cover the expenses incurred at Boston in laying in and shipping ice. Considering the actual position of our concern in regard to the pressing demand, or rather the absolute necessity for funds at Havana, — to say nothing of *my* "convenience," as the holder of his order for upwards of \$6000, to come out of his share of the first net proceeds, — some men would have thought that it did not require "a just generosity," nor even so much as a particularly scrupulous sense of propriety, to restrain them from saying a word about "the remittance for ice-disbursements." Nevertheless, I immediately transmitted the money, \$2000, to him.

Another post haste letter, by the same route, followed next day:

April 26, 1831. — "The extreme low price of sugar and as yet the small advance of coffee must throw, in the course of this year and next, much distress upon Havana. *This seems an additional reason for delaying the erection of the new house.* If the present one can be made to stand two years longer, I have very little doubt but the people and authorities will be satisfied; because communities as well as individuals, grow meek and contented with what they have, when their pockets are empty. (*p*) Also, *it will be a great comfort to me not to build,* until I get a little relieved. Also, the lot may probably be had cheaper next year, than this. Also, the objection on the part of the Intendant, for the crane, to hoist over the wall, may be got over, or given as a reason for not going forward. Also, the new house on the simple and durable plan will have been tried in New Orleans and proved.

"If therefore the house can be kept on its legs, I think it will be best to make it answer the coming summer and the next, and advance slow and sure with the new one, and cheaply also."

The circumstances under which these letters found me may be sufficiently judged of from the following extracts from my letters:

June 1, 1831. — "You will see by the above that the sales for the past month are small; smaller, I think, than they have been for the month of May for some years past." — "This was done [the writing of a memorial regarding one of the points involved in the permission to build] by a person of Mr. B.'s selection, and by his advice, as well as that of one of the Regidores, who has been very friendly towards us. The memorial I presented to the Governor myself, who said he would pass it to the In-

(*p*) This philosophical reason, — as, indeed, the entire string, — cannot fail to be amusing, as well as edifying, to the reader.

tendant, who has jurisdiction over that part. Yesterday, I was introduced to the Collector of the Customs, and had some conversation with his Secretary in explanation of the plan which accompanies the memorial."—"I have said above, that I was advised by Mr. B. and one of the Regidores to make the memorial. They had both told me that *the ground now occupied by the ice-house is wanted by the Government, to finish the iron fence already begun, along by the wharf.*

"I observe what you say about building the new house. I can hardly give any opinion whether the present house could be kept on its legs two years longer or not. It appears to me that it certainly could not be, without considerable repairs. The sides are swelled out in many places very much, and I have been obliged to put up several more props to secure them," &c. &c.

"*Postscript.* I have just had a call from the Secretary of the Military Department, who informed me that *he had been ordered by the Governor to notify me that the Director of Engineers had requested the Governor by letter yesterday, to have the buildings in San Francisco square cleared away; so that he (the Director) might commence his work, preparing for the fence, as he expected the iron work from Spain very soon. As the Secretary was aware of what we are asking of the Intendant (it having passed through his hands) he said that we must try to hurry him to despatch it, and asked me how long it would be before we could clear away. I told him it would take six or eight months, at least, to build a house.*(q) This, he said he thought would be too long for the Director to wait. If you shall not already have written something more determined about the new house, I hope you will soon: for I do not know how we can keep from making a beginning if the permission to erect the wheel shall be granted by the Intendant. Many of the memorials have set forth the bad state of the present house, and your willingness to commence the new one when a site could be procured."

June 11, 1831. — "At the close of this, I give a copy of *an order sent me yesterday, to have this place cleared away in two months. This order is said to be peremptory; and if so, it is rather hard, as two months time is very short to build a house, without taking into consideration the ice in the present house. But this will probably be lengthened if operations for the new house should be going on.*

"You see now *how we are situated. The Government requiring immediate and energetic operations, while I have nothing*

(q) Owing to Mr. Tudor's "poco a poco" plan of operations, it was not far short of two years before I could get the house entirely finished, and upwards of nine months before I could get it ready to receive ice.

on hand to begin with,—not even to commence the purchase of materials, much more the payment of the lot: although the matter of the lot is so arranged that but one half is to be paid on entering into possession, and the other half in two months. I hope you may have some letters of instructions on the way here.” The order referred to is as follows :

“The Comissario de Barrio of San Francisco will notify to the ice contractor, that within the term of two months, peremptorily, he demolish and remove the building erected by him on the square of that name, inasmuch as permission has been granted him to build on another site, and the corps of Engineers are to commence operations on said square. This order to be returned to the Military Secretaryship, with a signed acknowledgement of the notification.”

On the same day, I replied to a letter from a confidential friend in Boston, partly as follows :

June 11, 1831.—“I notice what you say about A.’s house. I have had it in mind several times to write you to purchase it; but I have ever kept back, waiting to see how matters might turn out here; and I now think it would be out of my power to make the purchase. I wish I could have known as much before I left this place last December as I did on my arrival this spring; and to give you an insight into the matter, I enclose the duplicate of Mr. Tudor’s letter of the 10th Dec. last. [See § 4.]

“I have come out here again on friendly terms with Mr. Tudor, and am determined to keep them if he will suffer me to do so; but if he begins another rupture I shall not think of easing off any more.

“The sales have not been equal to former seasons; yet, I have, within a few days, remitted him \$2000 to pay the disbursements in Boston. This, I think, will not be sufficient to satisfy him; for in the two letters he has written me he complains of want of money. In the first, he informs me that his Court street building is near finished, and a certain number of tenements are rented, but the worst of it is that Mr. Pratt’s estimate of \$16,000 has already run up to \$30,000, and he fears may reach \$32,000; and that I now may see to what an inconvenience I have put him by calling my money out of his hands. His second letter treats of the probable poverty of this place, on account of the low price of sugar and coffee; and that he does not wish to build here for two years to come if the present house can be kept on its legs; by which time he will have proved the new house he is going to build in New Orleans the coming winter.

“Now, this is all nonsense, if he intends to carry it into effect; for everything on the part of the Government here is ready for us

to commence our work, and yesterday I was served with an order from the Governor to have everything cleared away from here in two months. It is not, I think, likely that the order will be rigidly enforced to the very letter, if there are preparations for the new house going on; but if not, it is very possible it may be. I shall not, however, run the risk; but shall probably commence the work next week, and push it as hard as I can.

"Funds are wanting. I have called on Messrs. Scull, Storey & Co., to see if they would advance us some money to begin with, who say at once, that they will not, on account of the neglect with which they have been treated by Mr. Tudor. I have agreed with them to let *me* have \$1250, when wanted, and to take a draft on you, which you will please to honor. If necessary, you must sell my bank stock. This is all I shall want to draw for (I think, at least) until I may be able to hear from you after you get this."

This is a sample of the state of affairs in which I now found myself, under the operation of my munificent patron's "just generosity." I again write to him:

June 21, 1831. — "Since mine of the 11th inst. I have been asked by the Governor, through Mr. B——, why the new house was not begun, when I told him that nothing could be done until the present occupants had moved; and soon after, I was told to begin, as the people were moving, and that our work would hurry them away the sooner. Yesterday, I commenced clearing away and to dig the earth. I have made no agreement yet for the building the wall, or any other part of the house; but I think one *must* be made soon, so as to keep things going. A wall two feet thick can be built for three dollars the square *vara*, or thirty-three inches square, English," &c. &c. &c.

"I am in hopes to have some letters from you soon. If not, I see no other way than to agree with the masons here for the wall, and have it worked along as well as we can."

And thus did the matter go on dragging, whilst I was writing every three or four days, and despatching three or four letters every month, and awaiting, — so far as the pressure of circumstances would allow me to wait, — to be informed of my partner's definitive pleasure. The first letter from him contained not a word on the subject: leaving, of course, his letters of the 25th and 26th of April, as his latest "instructions." Then came one with the following wise project for "staving off" the necessity for building.

June 2, 1831. — "I begin to think a renewed application to build in the Plaza San Francisco would be listened to, on account of the depressed state of the public mind in Havana,

owing to the general poverty. A removal of the ice-house to one side of the city, must be inconvenient to the people living on the other side. A suggestion of this kind will be of force, if you think it advantageous to stir the matter anew in the Cabildo."

At length, there came one containing the following:

June 23, 1831. — "Your letters of 1st, 6th and 11th inst. are at hand, with the bill, \$2,000, which has been honored. I do not calculate on any more money from Havana until you are paid and the new house built. (r)

"But how is the house to be built, and you paid, I do not see.

"I therefore for instructions have to say: you may proceed in the whole business as your own judgment and circumstances shall admit. I foresee that the low prices of produce, the ice-house sales will feel. Already it is perceptible, as I do not think during your charge there has been so low a ten days' sale as this year in June.

"They will certainly never pull the house down while there is ice in it, and I think with you that to make a beginning in the new house might serve at least until next winter."

He thinks *with me*, "that to make a *beginning* might serve at least *until next winter*!" But when, or where, had I expressed any such opinion?

Just a week after, he writes the first of what may be called his *coffee-letters*, containing the following:

June 30, 1831. — "If you do not proceed in expenses, I have thought it would be a good arrangement for the concern to invest the proceeds of the ice-house in coffee, calculating to sell again in October. I have no doubt the article will advance very considerably before the commencement of 1832," &c. &c. — "Messrs. Scull, Storey & Co., I have no doubt, would be willing to buy 30 to 50,000 lbs., having their commissions on purchase and sale." — "You may double or treble the quantity if there are means.

"Should circumstances admit of this very safe speculation, I will join you, say three fifths to me and 2 fifths to you. If it is gone into, it would be well to state to Messrs. S. S. & Co. that it is intended to be re-sold in Havana and not shipped, or any risk run.

"I enclose a letter to them; which if you are disposed to the thing, you can seal and deliver. By going into this speculation we may be able to bring up a poor year's sale of ice, which I feel confident we shall have, and the money will come back in season for the expenses. If the money for your payment is de-

(r) How this pledge was kept, the reader will see.

layed by this operation, it earns interest, and can therefore make no difference to you. (s)

"I have so good a confidence in coffee advancing that I am making my arrangements for buying here 2 to 300,000 lbs. if I can get it at ten and a half to eleven cents; beyond which prices, I think I shall not go. Mr. ——— has adventured to the extent of two millions of pounds."

"P. S. If the coffee is to be bought, *no delay should be made.*"

The letter to Messrs. S. S. & Co., — as I was *not* "disposed to the thing," — was not sealed and delivered. It is as follows:

June 30, 1831. — "As it is uncertain at what time expenses for the new ice-house may be incurred, I have written to Mr. Damon he may invest the proceeds of the house in coffee at," &c. &c.

"My view would be to purchase from 30 to 150,000 lbs: to hold it three or four months and re-sell in Havana. You would therefore have two commissions, which I am willing to concede, as I suppose a considerable portion of the coffee will be required to be purchased before all the money can be paid."

That is to say, Frederic Tudor, Esquire, is willing to "concede" to Messrs. S. S. & Co. the privilege of advancing the funds for his "very safe speculation." (t) When he talks of investing "the proceeds of the ice-house," he means *by anticipation!*

But put this credit basis of "the operation" out of view, and suppose him to have intended merely to invest the cash proceeds, as they should, from time to time, come in: what are we to think of such a design, under the circumstances of our position? Circumstances at that time *fully* known to Mr. Tudor, who had upwards of a week to ponder upon them! But putting out of view, not merely the *credit* nature of the operation, but also the urgent necessity for funds for immediate use in matters of the ice-house; and supposing that the funds had been on hand, and not absolutely wanted for "three or four months" to come: still,

(s) By "the money for your payment," Mr. Tudor means the money which I was to make from the ice-house, — after there *should be* an ice-house, — in order to pay his debt to me. The delay of its payment could "make no difference to me," of course; seeing that it yielded, — or rather *would* yield, when principal and interest should, if ever, come to be snugly housed and secured, — an interest of *six* per cent. just one *third* to one *fourth* of what it would have brought at Havana; whilst I, meanwhile, was selling my property to raise funds for building the house!

(t) See § 4, note (k) — It has been seen, that Mr. Tudor's dignified aversion to "be beholden to any of the merchants" at Havana for an advance of funds, had been with him a perfectly satisfactory reason for indefinitely postponing the erection of the new house, and keeping me subjected forever and a day to all the consequences. We here see how far his dignity was efficacious, in regard to an advance of funds for a gentlemanly little wager upon the rise or fall of coffee.

situated as we were, what possible justification could any sober man have found for staking them upon a turn in the coffee market?

I was to state to Messrs. S. S. & Co. that the coffee "is intended to be re-sold in Havana, and not shipped or any risk run." No risk run! But suppose coffee should see fit, despite all Mr. Tudor's calculations, to fall! It is true, that on this occasion, it did not fall, but rose. But it is no less true, that in the very next year, when Mr. Tudor's calculations were no less profound, and his certainty no less certain, the reverse took place, and a grand catastrophe followed. At least, such is my impression; if it be erroneous, I can be corrected by those of whom he purchased, or those to whom he "conceded,"—as he was willing to do towards Messrs. S. S. & Co.,—the privilege of gambling in coffee for his account, with their funds.

The circumstance, too, is perhaps not altogether unworthy of being noted, that whilst Mr. Tudor,—situated as he is in regard to me as my debtor, and aware as he is of my situation,—is dunning me for remittances to help him out of his Court street scrape, he is not only engaging in the erection of a great ice-house at New Orleans, but is amusing himself at a little piddling game of "speculation" in 300,000 lbs. of coffee, to be purchased at Boston alone! It is true, however, that he does not *think* he will go beyond 11 cents; at which price, so far as my arithmetic can be relied upon, it would require not a cent beyond \$33,000, to make this little purchase.

A postscript to his letter, in regard to an ice-house keeper for New Orleans, is worth quoting, from the bearing it has upon certain incidents [see Appendix (E)] of the preceding year, connected with the same post at Havana.

"The young man I put in to supply Mr. Russell's place, in New Orleans, wrote on the 10th inst. that he was not well and thought he might leave. *I ask you to judge for me* whether Limbough would answer, and if so, to give him the enclosed after sealing it."

After this, his letters contain but little of interest. The following extracts will suffice:

July 13, 1831. "I have the pleasure to perceive by your letter of 21 ult. that the second term of June sales showed a little revival; but the depression of affairs in Havana, and the unavoidable poverty of the people must affect us this year and next. After that, I think the revival of prices of coffee may restore matters again.

"I have already written you to proceed in the new house according to means, circumstances, and your own judgment. The absence of employ for mechanics and call for materials

used, you ought to keep in view, so as to build the new house cheap."

July 15. "I wrote you per Juno, of the receipt of your letter of 21 June, and of my satisfaction at learning you had commenced the ice-house, (u) and also that the sales had increased a little. The times are so bad for the planters, we must not expect anything more than a very moderate year. Coffee, however, is advancing, and I think within six months, will rise 100 per cent. If you could have got hold of any of this article, we should, I think, have made up an indifferent year by the profit.

"I have but a few minutes to write, as the vessel which takes my letter is spreading her sails. I think in the building *you should regard economy*, and especially at this time, when the working men of Havana must be needy and in want of employ."

Sept. 7. "Several letters from you, together with the segars, have been received since my last. The impediment offered by one of the authorities means doubloons. (v) But we have

(u) The letter referred to, is that of July 13, written so long as *two days* before. It does not contain a word of "satisfaction" on this point. This fact is worth noticing, as an illustration of the habitual accuracy of his recollections and statements.

(v) My letter had not suggested any such imputation; and the result proved that there was not any ground for it:

August 2, 1831. "The day of the date of my last letter, the Governor, through the interference of the Director of Engineers, suspended our work, and left orders at the place that I should appear before him; when he said that he had no idea of our digging away the bank of the wall, nor that it was our intention to build of stone. I told him that in all the representations wherein the quality of the house was mentioned, it was of stone, and in no case of wood. He said that stone could not be admitted, for the Engineer had complained of the digging away of the bank, and that it was necessary to keep a passage open along side of the wall, and that the house was to be pulled down if the exigencies of the Government required, &c; that there was to be a Junta of Fortifications that day, and they would see what could be done. It appears there was no act passed that day; it is possible there was some conversation on the subject, and so it passed: a strife between the Governor and the Director of Engineers, the one having given permission for a thing which he appeared willing to get over in the easiest manner he could, and the other opposing it, in toto, with all his might. At last, it was compounded, I believe by the secretaries; for I was told by one of them, a few days since, that the Engineer would consent, on leaving a space between the house and wall, for soldiers to pass, in case it should be requisite to defend the city from that quarter. But this morning I learned, to my surprise, that the Director had sent in his consent, couched in four articles, approved by the Governor; and that, besides leaving a space of five feet between the house and the wall, for infantry, the house was to be of wood, and this place for infantry to be earthed up so that the soldiers could fire over the wall. &c. This building the house of wood, I objected to at once; stating that it would be of no use; a wooden building in such a cave as that, surrounded by high walls on all sides but one, would rot down as fast as it could be built up; and that the building in such a place, where we should be obliged to leave a space all round it, so as to nail on the boards, would reduce the dimensions so much, that the house would be good for nothing." The result of the matter was, that this difficulty was obviated by our being allowed to use wall on the sides adjacent to the stone edifices already existing, and we were restricted to wood only

none to spare. *Do not proceed until all impediments are removed.* It is better to suspend than to pay to get rid of objections. *Absolute suspension will bring them to, in time.*

"Coffee has risen since I wrote you on the subject, about 25 per cent. I calculate by Christmas 75 per cent. more will be added to this advance. If you have purchased, it will prove a good thing. If you have not, it *will not be too late* when you receive this."

Sept. 17. "I have received your No. 15. About the cement, I will make enquiries. If you had bought 4 or \$5,000 worth of coffee, in August, when, as it happened, it could have been had at 7 cents, the following state of matters you would have found at Christmas:

"The concern would have been able to sell the coffee at double, and possibly treble the cost. You would have got interest for your money, and the Nov. and Dec. rate of bills, the highest time of the year of bills. The suspension of the building *would have convinced the authorities that we had no doubloons for them, and they would have left off, in alarm, their molestations.* All the winter, you might have proceeded in building, and been quite in season for the spring. Now, the authorities think something may be got.

"The best way to do is, utterly to suspend the work, until the house is allowed to be built as it is needful it should be. You can say *you have received orders to do so from me. (w.)*

"As to building the house, one side of it wood, or building three sides first and one side afterwards, *It absolutely will not do.*"

Oct. 22. "Coffee continues to advance. Now, 13½ cents, and doubtless will be 20 cents before spring."

Nov. 28. "I have gone into purchases of coffee to a very considerable extent during 4 months past, and have a very great quantity which I propose holding till this time, twelve months. I hope and expect to do well with it. The ice concern would have done well if it had bought; but it might have embarrassed your building.

"You ask whether you shall draw on me. Answer: no. If you do not receive money enough to pay as you go along in the building, you *must build slower.* There is no need the house should be finished for 5 or 6 months to come. (x.)

on the open sides, where there was room to work. But,—as I informed Mr. Tudor in reply to his above letter,—it cost us no "doubloons" to obtain this favor.

(w) Replied to, as follows:

"I am equally sorry that we differ in our opinion respecting the authorities here; and that we might have suspended the work on the new house, to enter into speculations, and resume it again at pleasure."

(x) Very "cool and dispassionate." See above, the June peremptory order of

"Mr. Hamilton, at New Orleans, has left my employ, and I have a good situation vacant. Limbough has been soliciting employ. If *you think* he will answer for me, let him have the

the Captain General. To which add the following, from my letters to Mr. Tudor shortly after the date of his present :

Nov. 21. "Our work on the new house is going on slowly, *as there is but one carpenter*. The mason has done all he can *at present*."

Dec. 1. "Our work goes on steadily *with the few hands* I have at work; the stone floor being fixed, &c. &c. We have now commenced the inside frame; this is to be of acana," &c. &c.

Dec. 11. "The Government is going on with their other work in this square, rather slowly but steadily. They have dug away the earth nearly all round the house, and it appears as if their wish was to come nearer; but as yet they are very civil."

Dec. 21. "Mr. B—— [the friend, for whose exertions in our favor, we were indebted to Mr. Scull] told me this morning, that the Government were very anxious to have us move from this square, so that the public work might get on faster. I told him we were doing all we could to get out of their way, and that I hoped we should not be disturbed until the new house was ready, and a cargo of ice in it. I fear there will be another order for us to move."

Dec. 31. "All the joists are laid for the floor, and I am ready to put in the stuffing. This, however, ought not to be done until the roof is tight, and I *have nothing to make it tight with*; [thanks to Mr. Tudor's being so engrossed with his great coffee-fortune—that was to be—that I could not get him to attend even to my inquiries and requests about the details of the building;] and by the middle of the coming week, I shall be nearly out of work for want of a tight roof. This cannot be put off any longer, unless the work is suspended entirely, and that cannot be done, as the Government are upon me, so that they may go on with their work. I think it doubtful whether or no we shall have difficulty with the Government. I must now push the work as fast as possible. I asked you in October (21st) if I should draw on you for money; but I have no answer, nor any letters from you since that of Nov. 5."

The inquiry from me here referred to, was :

"I am in debt here now; and there are many materials to purchase yet, as well as considerable labor to pay for; and I want to know if I shall draw on you for small sums, from time to time, as wanted."

My position at the moment may be judged of, from the following, in a letter to my Boston friend.

Oct. 17, 1831. "Notwithstanding your solemn charge not to send for any more money, I shall be under the necessity of calling on you again, perhaps soon, for some \$10 or \$1500, which you must be indulgent enough to bear with during my necessity. I have, once in a while, a letter from Mr. Tudor, who appears to be very easy, or rather indolent, about the work on the new house; he wants me to brave the Government here, and talks about suspending the work if they do not give all the facilities wanted; but he is red hot for speculating in coffee, and I am not certain but he will open a broadside or two upon me because I did not suspend the work to enter into this speculation. If he does, I shall not flinch, but go on regularly with the work; and, if circumstances should require, I shall call on you to ship me some ice.

"I shall write to him by this opportunity, and ask him to furnish me with money; but before I get an answer, I may have to draw on you. If so, I shall charge the concern $\frac{1}{2}$ per cent. per month, the price of money here now." [See subsequent note, (c.)]

Shortly after, I say to Mr. Tudor:

Jan. 12, 1832. "On the 3d inst. I acknowledged," &c. &c., "and requested that you would not wait until the ice was near out, before you sent some more. I hope you may have a cargo on the way when you receive this; not that we are likely to be short of supply, but that we may have no difficulty with the authorities; as they certainly will want us away soon, to carry on their work. — When I

enclosed ; but if you think there is any deficiency besides his health, do not. I want a man that *can be trusted*, and no other."

Dec. 14. "The reduction of the tonnage duty is very injurious, and a representation to this effect should be made immediately. We should be allowed to bring what freight we choose in ice-vessels : certainly half, otherwise we lose \$1,000 per annum."

Feb. 9, 1832. "I wish much to commence the new price of ice ; seeing continually the beneficial effects of it, in the content and satisfaction it gives to the inhabitants, and, eventually, increased profit to the ice-house. *Do not, however, make the change yet.* Perhaps some requests or grants are to be asked of the Government. This tonnage reduction is \$1000 a year out of our pockets, and ought to be allowed by the Government, by some favor or grant equivalent. They actually granted what they have taken away. By giving to others, they have taken from us."

This had reference to a general reduction which had taken place in the duty on tonnage, and which operated to our disadvantage, inasmuch as the exemption from the duty being now less of an object to the owners of vessels coming to Havana, we could no longer get our ice carried on so favorable terms.

"The new price of ice" here spoken of, was a project that he began to agitate seriously about this time, and on the subject of which,—as will be seen hereafter,—he finally became so peremptory, as to cause me to repair to Boston, towards the close of 1834, for the purpose of settling our difference with regard to it in the only equitable mode that it appeared to me to admit of. For the present, I go on with the extracts from his letters. My inquiry whether I might draw upon him is thus further replied to.

Feb. 11. "With respect to supplying funds, except from sales for the ice-house, *it is out of the question.*"

March 1. "I think the falling off of sales for 1831, is very bad ; but as coffee and sugar are rising, I hope we may profit by the

asked you for slate, paper, &c., I also asked if I could draw on you, being then in debt, and many things to purchase. You now say that I must not draw, but build slower. We have come to that state of the building that it must go forward or be suspended entirely. There is nothing done to the top part of it, only what is absolutely necessary, and the roof ought to have been covered before this. The work that now must be done is," &c &c. "How I shall get the money to carry on this work, I cannot now tell. If money is hired here, a percentage of 2 per cent. per month will have to be paid ; and I think I shall have to allow that to some of those I am now owing." "The papers were received, for which I thank you. They are read by the boy I brought with me, who attends to the delivery of ice ; but I have no time myself, being at work all the day in the new house, and too tired to read of evenings."

general prosperity of Havana, which is coming. But the low price I have proposed, which we must begin to think about, will be the only effectual cure for poor sales. *I shall write you shortly what demand we are to make from the Government, to make the reduction.*"

March 22. "If you find your ice-house has cost so much as to be inconvenient to remit for the disbursements here, I think Messrs. Scull, Storey & Co. will let you have a bill at sixty days' credit (y) at par; as bills are very dull of sale in Havana. *It is needful this remittance should be made to me, if it be a possible thing, as agreed.*"

April 25. "I have received your letter of 24th ult. I am sorry you are unwell. You have had a good deal of fatigue and excitement. I hope you may now have some relaxation, so that you may take exercise and keep yourself well.

"I have now only to say, *as soon as you possibly can, you must send forward the money necessary for the current expenses. These must be attended to, or I shall be put to great inconvenience.*"

April 26. "I wrote you in all my late letters that, as there is a pressure in the money-market nearly all the time, you must strain yourself not to allow me to suffer inconvenience for the ice disbursements here. I have now again to request your attention to this point."

These two letters (I have given them entire) show how faithful the solicitude of my partner was about the "convenience" of Mr. Frederic Tudor. At the very same time, he was enabled to command funds to order a shipment of 3000 boxes of sugar from Havana to Europe. In his letter of Feb. 11, he had said, "I shall ship by the Governor Brooks 800 boxes of sugar from Havana to Bremen. This, partly to make Messrs. Scull, Storey & Co. better humored." And in a postscript to that of March 1, "I have ordered a shipment by S. S. & Co. of about 3000 boxes sugars." Whatever may be thought of his endless dunning of me for remittances, it must be confessed that his sugar-plumbs, "partly to make" people "better humored," were on a princely scale. Only think! a little speculation of 3000 boxes of sugar, just—or only "partly"—to make gentlemen amiable towards the ice-house. Who, after this, so barefaced as to call in question the noble munificence of my "patron" towards our joint concern?

July 3. "Coffee is going to take another start shortly, as I believe. Good triage at 7 or 8 cents, in my opinion, will give 50 to 75 per cent. on the spot in all October. If you have the

(y) See a previous note, (t.)

means, you may buy, on ice-house account, whatever quantity you may be able to lift with your means. There is not a market," &c. &c.; "*now is the time to buy.*"

Sept. 4. "I wish much to get the accounts of cost of ice-house, &c.; and also to have your views respecting the three cents per pound reduction, which I think of the greatest moment to have attended to."

Sept. 18. "In making up accounts for ice disbursements here, I am at loss to know what to do about two ice-houses, — one full, — carried away at Kennebec the last spring: near \$2000 lost. What part shall I charge to Havana? (z) Yours with sales to 1st inst. is received. I am sorry for your accident, and hope the injury to your finger may not be so serious as you apprehend."

Dec. 12. "I have received your letter of November 1st, with sales to the close of October." "I had determined not writing to you at all, or shipping any more ice until I got accounts of cost of ice-house and the current account."

"I now write to you to complain for the thousandth time of this extraordinary deficiency of you, and which I should think would not again have occurred after what has passed. Instead of this, you grow worse and worse."

Let the reader note the circumstances under which this illustration of my partner's amiability takes place. Besides the numberless daily harrassments to which I had been subject for nearly two years, ever since my last return to the scene of my toil and trouble, my general health, — as Mr. Tudor was fully aware, — had become very bad; and I had, about the middle of August, met with the accident about which he has just expressed his sorrow. This was the crushing of one of the fingers of my

(z) Some individuals, and I believe many, — and without supposing themselves entitled to be considered as "munificent patrons," or as anything more than honest men, — would *not* have been at all "at a loss to know" what part of this loss to charge to the pocket of J. W. Damon. Unless they had conducted the business of furnishing the Havana establishment with ice upon a totally different principle from that on which it was, unless I greatly mistake, conducted by my partner; they would have *known* and *felt* that they had no right whatever to even propose that Damon should bear any of this loss. To be sure, they *would* have conducted the business on the principle referred to; *they*, in my partner's position, would have known and felt that the only course for them, after I had consented to become a partner in the concern, was, to be scrupulously exact in furnishing it with ice *at cost*; without making one cent of profit. And having conducted the business on this principle, they would have been entitled to distribute any accidental loss of the sort, *pro rata*, among the persons interested in the establishment. [See further on this subject, Appendix (D).]

This "at a loss" of Mr. Tudor, was responded to by me as follows:

"As respects the ice carried away at Kennebec, you will do as *you think most proper*. This is the first notice you have given me of there having been any *stored there*." It ended in his charging the Havana establishment \$500 on account of this loss, on the principle of distributing it among his different establishments.

right hand, whilst engaged in work; and Mr. Tudor's last intelligence on the subject was in these words. "Since which it has been so inflamed, that I have not been able to do anything. The inflammation has somewhat subsided, and it is thought that the joint of the finger will have to be taken off."

His threat not to write, and not to send any more ice, was thus replied to.

Jan. 12, 1833. "Your letter," &c., "by which I learn that you have been unwell and that you had become much exasperated on account of the delay of accounts for the new house. I have no other excuse for the delay than those already given, and am sorry they have not been satisfactory. I enclose with this the account mentioned in my letter at the close of October, and expect to send them by the Stag. The other is not finished; but if I am able to get it done by the time the Stag sails, they will all go together.

"I hope that before you conclude not to send out any more ice, you will send out another ice-house keeper, who will be proof against all kinds of sickness." (a) And a few days after I write:

Jan. 21. "My health is still very slender, but, I believe, on the increase. Dr. Morrell has told me he thought a few weeks in the country, on milk diet, and horse-riding, would restore me. This, I cannot comply with; and I have commenced on the bread and milk, without the riding."

The diet, however, proved ineffectual, and my health finally rendering it imperative that I should go North, I embarked, towards the close of the summer, after weathering the cholera,

(a) Whilst I was writing this, the following was on its way to me from Mr. Tudor. It is to be noted, that in the year just expired, besides remitting to him \$2000, in compliance with his importunities for money, I had yielded to his coffee-speculation urgings, by investing upwards of \$1800 of borrowed money in that article. But this, so far from satisfying his thirst, served only to whet it, and make its cravings the more irresistible. To gratify it, see what a predicament he places himself in, and what an alternative he forces upon me; and this, without a word of notice; the bearer of the letter being the person to whom the money was to be paid "*immediately*."

Jan. 9, 1833. "I yesterday entered into a contract with Mr. Parish of Hamburg, to ship from Havana ordinary coffee to the invoice value of \$2500, on board the ship *Regulus*. This engagement of mine is *absolute*, and I shall wish you to furnish Mr. Tappan, the supercargo, with the means to make the purchase *immediately*. This sum you will charge me as if remitted for the funds needed to pay ice disbursements here for the present year." [Even under ordinary circumstances, Mr. Tudor, according to the understanding between us on the subject, would have had a right to expect only a remittance of \$2000; and this, not until the beginning of summer.] "I ship, in addition to this parcel, 100 tons coffee by the *Regulus*."

"My arrangements with Mr. P. are absolute, and I trust you will not allow my credit with him to suffer, as he is to furnish the funds for the purchase of the said 100 tons, and which will amount to \$20,000, which he advances upon my credit, and by his confidence in the fulfilment of my contract as above."

Most munificent of patrons!

which was followed by the fever, after having made greater havoc at Havana than in any other place in America. Down to the moment of my departure, I continued as usual, to write three or four times a month to Mr. Tudor, and to send him tri-monthly statements, &c.

March 21. "You see by the account, that the number of purchasers has kept up in an uncommon degree, in proportion to the money received. This is owing, I believe, to the use of ice in the treatment of the cholera: for, these days that I have been off my bed, I see strange faces, and many from the outskirts of the village, where the disease has been, and still is very distressing.

"Yesterday I offered to the First Alcalde, ice gratis for the poor; they bringing a note from the doctor, certifying to their poverty." "My own health has improved considerably these few days past: my nephew is very well, and has been all the time. I know not what I should have done without him while I was sick. I hope my health may soon be restored; if not, I propose to leave him in charge, after procuring a faithful man to stop with him and protect him. If I should do this, I shall make the house of Scull, Storey & Co. the place of deposit."

April 1. "Here is also an account of the ice furnished gratis to the poor, sick with cholera, with the names of the physicians who attended each: one or two of whom are among the first of the place."

May 1. "Of my own health, I can say but little; there are short intervals that I feel perfectly well, and then I am very ill again."

July 1. "I must tell you that I do not feel as if I could enter into the spirit of your letter; my health and spirits are not buoyant enough for it. If I had anybody to take care of the house, I would make a trip to Boston *immediately*. But I have none: my nephew has been sick, and is now recovering; the man I intended as an assistant to him, if I should go to Boston, is now sick, and has been for better than a week, with the fever. In fact, it is sickly here."

July 8. "My nephew is now quite well, and the man spoken of as an assistant to him has become much better; and I now think I shall leave here the last of this week for Charleston, and so go on to the North. We can talk over the subject of your letter much better than it can be written upon; and if no accident befall me, I shall probably be in Boston in all this month."

July 13. "The above is a copy of the sales for the last ten days, by which you see there is no improvement on the same for

last year. I expect to sail to-morrow morning for Charleston, and then make the best of my way to Boston. I leave my nephew in charge of the house, together with another man to protect him; and they together will, I have no doubt, do well with the house."

The reader acquainted with the circumstances attending my departure, and preceding it, through a long period, will scarcely believe it possible, nevertheless, it is a fact, that my absence on this occasion was, a year or two after, made a subject of grave reproach from my "munificent patron!" Besides considering it a great liberty on my part, to leave without his previous consent, (some men, by the by, however intent they might have been upon making money by coffee and sugar speculations, and upon saving money by my services, would have deemed it incompatible with *decent feeling*,—to say nothing of generosity,—not to *urge* me, under such circumstances, to make the best arrangements I could, and repair forthwith to the North,) he reproached me with his liberality in allowing my compensation to continue during my absence; (although the provision I had made for the conduct of the business, was at my cost, and at my accountability;) and also for the length of that absence, although it had been prolonged at his special request. (b)

(b) Towards the close of December, having become extremely uneasy at the cessation of my nephew's letters, I purposed to embark immediately for Havana. On the 24th of that month, I received a note from Mr. Tudor, asking my attention to a matter of the concern at Boston, and concluding thus:

"I hope you will not think of embarking before my return, which will be by the 15th of January. [I was detained till the 3d of February.] There can be nothing the matter about Lyon, or it would have been mentioned by S. S. & Co. in their letter of the 4th inst."

One of his subsequent reproaches on the subject was, too, that I had left the establishment in the keeping of "a child;" and that his interests had greatly suffered thereby. Even if this latter assertion had been true, every reader will judge for himself how far it would have been compatible with proper feeling, to make of such a fact, occurring under such circumstances, a ground of taunting reproach. But neither he nor any other man can adduce the slightest reason for believing it true. Incidents did occur,—originating in an attack of fever experienced by the "child,"—which render it impossible to assert positively that Mr. Tudor's interests did not suffer to the amount of a single cent. But the facts of the case, and the result of the matter, go to establish a very strong presumption that it was so. And accordingly he had to confine himself to vague assertion in regard to injury from the conduct of the business by this "child." His ability to speak less vaguely and to enter into particulars,—among which a falling short of the amount of sales, "20 per cent."—was reserved for a subsequent period, in regard to an agent of *his own*, employed by him, wrongfully to keep me out of the ice-house, until it was forcibly restored to me by the tribunals of justice.

§ 7. — 1834. — *My Return to Havana, Feb. 1834. — New Difficulties with my Partner. — Consequences of the heavy Advances made by me. — His Instruction forthwith to reduce the Price of Ice. — My Departure for Boston, in October, 1834. — Purpose of my Visit. — This Ground of Difference between us is abandoned by Mr. Tudor, and his old Pretension to reduce my Compensation is substituted in its place. — New Discoveries made by him, in regard to the Nature of my Rights and Obligations, and New Positions assumed by him. — Alternative presented to me, to acquiesce in his old Pretension and new Positions, or submit to the Confiscation of my Property.*

I got back to Havana on the 17th of February, 1834, and had been there but a short time before the old leaven in my partner began again to manifest itself. One of the causes of its renewed activity, goes to prove the wisdom of the old adage which prescribes "short accounts" between those who wish to remain friends.

HEAVY ADVANCES. It has been seen to what amount Mr. Tudor was my debtor in 1831, after all the reductions for which his "just generosity" discovered grounds; and it has been seen, too, how particularly inconvenient to him had been what he termed the withdrawal of my funds. So little efficacious, however, had said withdrawal been, in restoring things to a balance, that on the settlement, or liquidation, which took place between us at Boston, just before my departure, he appeared my debtor to an amount exceeding \$9000. (c) Whilst my funds were in this peculiar state of withdrawal, an incident occurred, showing how exceedingly trying to the lordly temper of my partner must have been the bare idea of any other sort or mode of withdrawal. By

(c) A portion of the amount was made up of the two following items, copied from a sketch of the account between us, transmitted by him August 12, 1834. From the second item, it will be perceived, that in this instance, he adopted the improvement of casting up interest tri-annually, instead of annually, as had before been practised. In other words, whilst money had been worth at Havana, from one and a half to two per cent. per month, my money was earning in his hands one half per cent.; and this even, not credited to me until the expiration of three years.

"Amount of my obligation dated 22d March, 1831, \$4463.34.
"Interest to 31st Dec. 1833, 743.16."

What money was worth at Boston during this period, — and particularly in the winter of 1833-4, when "the Banks do n't discount now," — Boston business-men can tell. It is to be noted, too, that this good six per cent. rule, or rate, was not confined to that portion of my partner's debt to me consisting of money borrowed by him prior to our liquidation of Feb. 1831. It was made to embrace the moneys which I had raised in the ways that have been seen, and which I had advanced and expended at Havana, at a time when the current rate of interest there, on the best security, ranged from one and a half to two per cent. per month.

all possessing any knowledge of Mr. Tudor, it will be recognised as in perfect keeping with his "lofty" character, derived perhaps from the blood royal, which, if his claim to use the coat-armor of the English house of Tudor be well founded, circulates in his veins. Certain it is, that King Henry the Eighth himself could scarcely have treated with more princely indifference any vulgar matter of pounds, shillings and pence.

Some young relatives of mine having applied to me for assistance to purchase a little piece of land adjacent to their homestead, I had promised they should have it. On my informing Mr. Tudor that I should want some money, and being asked how much, I told him the sum,—“nine hundred dollars.” “Why, that’s a good deal of money,” replied he; “when will you want it?” It was not wanted immediately; and on being so informed, he gave me to understand that it should be forthcoming. When the time mentioned by me had come round, the renewal of my application drew from him the reply “the Banks don’t discount now.” He seemed to think that this ought to be perfectly satisfactory to me; but I made bold to say, “Why, Mr. Tudor, what have I got to do with the Banks?”

The result of the matter was, however, that I had to content myself with this piece of information, in lieu of my money, and was placed under the necessity of failing to fulfil the pledge I had given, or finding means to raise the sum, notwithstanding that the Banks did not discount.

The effect of this lesson upon me was, a determination to become less dependent upon Bank accommodations, by being in future less lavish in my remittances to Mr. Tudor, and so managing our money concerns as to bring the account between us to a balance. Thus was one of the causes of the fair weather,—comparatively speaking,—that had prevailed for some years, made ultimately productive of the contrary effect. Thus arose a cloud to cut me off from the sunshine of my patron’s favor. It may be remarked too, by the way, that his urgent need,—or at any rate his most urgent need,—of my services having expired with the completion of the new ice-house, he could now afford to be *generous*.

REDUCTION OF PRICE. Another cause of storm consisted in a determination formed by my partner suddenly to reduce the price of ice to one third of that at which it had been selling for eight years. This determination was based upon the idea, that the consumption would at once increase to an extent more than compensating for the reduction of price; although it was contradicted by our experience of two previous reductions, first to two thirds and then to one third of the former price, which establish-

ed the fact, that, after this supposed cause of increased profits had been in operation for about eight years, the sales were actually less in amount than they had before been. (d) However true it may be, as a general rule, that the lowering of the price of an article will augment its consumption, and that this aug-

(d) When he had last begun to agitate this subject, he had commenced, as has been seen above, by asking my views. These had been given to him, in part as follows :

"I cannot think it worth while to reduce the ice to three cents yet; and the great reason why: *we are not able*."—"We know that since it has been reduced from a real to a half-real, we never have received but about three fourths as much money, in a season, as we did when it was at the real price. When the price was *one and a half* real per lb., the price of ice-creams, of all kinds of drink, [iced or not iced, they were sold everywhere at the same price] was *the same that it is now*; and I have no doubt they would keep them at the same point, ice being sold at three cents. I think we had better wait some time, and recover the expense of the new house before we reduce the price."

This was in 1832. The next year (the year when his calculations, and his certainty, and his positiveness in regard to the consumption and the price of "coffees," were crowned with a result not very much calculated to command my faith in his infallibility in applying the laws of political economy to special cases) I wrote:

"I hope you will not conclude to reduce the price this season, if ever."

I will here give a few extracts from Mr. Tudor's letters, having reference to the operation of the reduction of the price to one real the lb., which reduction had been forced upon us by an under-bid :

August, 1825. "Complain to Mr. D—— of the reduction of the price, and ask him *whether it cannot be raised*." [The gentleman here named was the most efficient friend we had at Havana.]

Dec. 30, 1825. "Our sales of Sep., Oct. and Nov., show a *great* falling off. In future I expect the early sales will prove the best; as the use of ice by the coffee houses, for cold drinks, has increased, while I suppose the ice-cream customers have diminished. I hope, if the affair of the contract is not complete, you will mention the great falling off of sales in consequence of the reduction of price. Mention this to Mr. D——, the Doctor, and Mr. —."

April 8, 1826. [In a letter to Mr. Knight, transmitted open to me, of which the duplicate has remained among my papers] "I am sorry to perceive in the last year's sales a falling off from those of the preceding year, of full eighteen per cent. So that the reduction of price to a real the lb. operates heavily against me, notwithstanding the endeavors of Mr. Damon, by selling in the streets, to increase the demand, selling small quantities at half price, and large quantities at twenty-five per cent. less than former years, has had a heavy effect upon net proceeds."

It will be recollected [see § 2,] that this reduction, and this consequent *heavy effect upon net proceeds*, was caused solely by the circumstance that Mr. Tudor had no Privilege when he sold to me. It was rendered necessary in order to prevent the Privilege from being granted to our competitors. Query: would a Court of Law, or a Court of Equity, have compelled him to indemnify me for my share of the *heavy effect*?

The last reduction which had taken place, to a half-real the lb. was, according to Mr Tudor, to perform wonders. On this point he had been no less positive in 1828, than he was now about the certain effect of further reduction :

Nov. 27, 1828. "The falling off this year of sales, to the close of October, if my castings are right, amounts to \$5,311 from last year, and more from the favorite year of 1824," [when the price had been one third higher.] "A reduction of price, to a half-real, must be our remedy; and that, I trust, in the second year of its trial, will produce as wonderful results as taking off *five sixths* of the price in Charleston has done."

Accordingly, the remedy was tried; and its operation proved such, that Mr. Tudor *wanted to go back to the old price!* In every instance of a reduction, this absurd and *impracticable* project was his remedy for the "heavy effect."

mentation will often be sufficient to increase the profit upon the aggregate, — this rule has its limitations and exceptions. One of these limitations is, that *time* is necessary to the production of the effect; and that this necessary time may, in any particular case, be so long as to render a measure which would be wise on the part of governments, that have to deal with generations of men, absurd and suicidal on the part of individuals, who have to measure their time by years if not by days. However this may be, from my own personal and intimate knowledge of the habits and character of the population of Havana, I was thoroughly convinced, that the desired effect could not be produced by the contemplated means, if at all; and that the attempt could not fail to prove most disastrous to our interests. I had long given my attention to the subject, and had used the opportunities afforded by a residence on the spot to form a correct opinion of the matter. That at which I had arrived was fully concurred in by every individual whom I consulted on the subject, including gentlemen not inferior to Mr. Tudor in general intelligence, and his superiors in experience of commercial matters and in capacity to form sound judgments, particularly in regard to questions depending, in a great measure, upon the peculiar habits and character of the people amongst whom they lived. (e)

(e) Nothing could be more fallacious than to infer from the operation of any given cause, (dependent for its effect upon domestic habits and customs) at New Orleans or Charleston, that the same consequence would attend it at Havana. According to the Spanish system of living, there is no such thing known as what is meant among us by *house-keeping*. Nothing, absolutely nothing, is kept in the house. They have a proverb, "Mas sale plaza cara que dispensa barata;" which means, "tis more economical to buy dear at retail, than to keep a store of provisions purchased cheap." The extent to which this is acted up to, is inconceivable to one brought up with American or English habits of living. The neighboring grocery is the *dispensa* or store-room of the families around. The materials for breakfast and dinner, even to the very condiments to be used in cooking them, the pepper and salt, are provided from day to day. So is the fuel. So is the bottle of wine for the table. Upon such a system as this, the great purpose for which ice is required by American house-keepers has no place. Its sole use is, for cooling drinks, and making ices. At table, they are averse to cold drinks. They take them only as refreshments, in the evening, or during the interval between breakfast and dinner. And then, they are taken at the coffee-houses, or places of public resort; or they are procured from thence; the habits and customs are against their being prepared at home.

Now, that the price at which ice was selling did not interfere at all with its general use for this purpose, was proved by the fact, that drinks of all kinds had, for a long time, been selling at exactly the same price, whether iced or not iced. Every one had his choice. And these were the circumstances under which I was "instructed" by my partner, seriously to propose to the providers of these refreshments, to reduce their prices one half, in consideration of their obtaining ice at half price! The very article which they were already willing to purchase and to give to their customers without charge, was to be sold to them at half price; and, in consideration of this, they were to lower the prices of their refreshments in the same proportion; whilst their sugar, their fruits, their labor, their lights, their servants' wages, their rents, their licenses, &c. &c. &c., *cost the same!* And if they should refuse to accede to this wise proposal, the refusal was to "*put them in the wrong*" in public opinion!

Although, at the time of consenting to become Mr. Tudor's partner, I had agreed that he should have "the right of *instructing* the *mode* in which the business shall be *conducted*," I certainly had not then contemplated that this right should extend to the utter destruction of the value of the property, for a share in which I was paying my money; nor did I now believe that this stipulation, fairly interpreted, bound me to acquiesce in anything and everything which he should determine upon, under the idea, or the pretext, that our interests would thereby be promoted. Besides, our interests, although blended for the time being, and indeed for an indefinite time to come, were not absolutely identical; and so far as they might be otherwise, *some* regard was justly due to mine. His views were always on a grand and magnificent scale, and extended far into the future. Mine were contracted, and never embraced more than a few years ahead. He might be disposed to sacrifice, partially or wholly, the present value of the property, by a measure which promised at a remote period to repay the sacrifice. But, did this render it obligatory on me to agree to the sacrifice? Was this obligation altogether without limit, no matter what the extent of the proposed sacrifice might be, and no matter how deep my conviction of its utter folly? Certainly not: there must, in the nature of things, have been some limit to it. It has been seen, that, in regard to one point, and a very important point, I had, in 1829, had some ground for considering Mr. Tudor, "*beside himself*." That ground was, an oft reiterated and most peremptory "instruction" regarding the course I was to pursue towards the authorities of the country. Suppose similar ground should be afforded by some "instruction" of his, bearing upon the value of our common property: was I still bound to acquiesce?

But, grant, for argument's sake, that this was the nature of my position; it may still be asked whether I was bound to carry into effect, *instantly* and without expostulation, every "instruction" he might write, however manifestly destructive of our joint interests? Here again, certainly not. So at least, I thought; and therefore, instead of instantly carrying into effect his instruction to reduce the price of ice, I ventured to offer, in opposition to this measure, my own views, and those of gentlemen known to him and relied upon by him in matters connected with the ice-house. This expostulation elicited a new series of explosions of his self-sufficient, dictatorial and contumelious temper. (f)

(f) Of this new series, the tone may be sufficiently judged of by the following extracts from the last two letters written by me prior to my departure, in which I took any notice of his reproaches:

Sept. 1, 1834. "Your letters of the 9th and 19th July, were received by the

MY DEPARTURE FOR BOSTON. From this state of things, again arose the necessity of my repairing to Boston, to settle difficulties face to face. This had always proved the only course for bringing him to reason, which the process of letter-writing seemed always to make him diverge from, more and more widely, at every step. I formed the determination to repair to Boston, in the design, should he persist in his scheme of reducing the price of ice, again to propose to him to remove all difficulty by purchasing back my share at the original price; a proposal which, under such circumstances as would be presented by this irreconcilable difference, even so unreasonable a person as Mr. Tudor could scarcely be expected to decline, particularly after having

Delta. In that of the 9th, you have a comparison of sales between New Orleans, Charleston and Havana, for the first ten days of June. The difference is certainly great."—"I am sorry that your business here is not so profitable as in New Orleans and Charleston. You are aware that the house [on this subject, his last observation was as follows: 'You have built a bad ice-house. I intend, — notwithstanding your evident disinclination, — that you *shall* make it a good one.'] was built of the materials that could be had at the time, and not of the materials that would have been used if they could have been had. You say you have a feeling that you are perpetually resisted in your wishes, &c. You may be assured that whatever proposition you may make to the inhabitants, respecting the price of ice, will not be kept from them by me hereafter. As it respects the three questions towards the close of the letter, I answer to the first, that I will advertise in the papers any butter, apples, &c. that I may receive from you, and do my best to sell them when people shall come to buy. To the 2d and 3d questions, I must say that I cannot promise to make any farther or greater exertions to 'improve the house,' or 'to restore the lost character of the Havana ice concern;' in fact, my health is such that I cannot promise to do even so much as I have heretofore done."—"I have not, as I can think of at present, any reason for not reducing the price of ice, that I have not already given; and as they do not appear to be satisfactory to you, I forbear repeating them. My ill health, if nothing else, must soon give you an opportunity of carrying your plan of reduction into operation, *through some other person.*"

Sept. 11. "Your several letters of the 30th July, and 12th, 13th and 19th August, came to hand yesterday, and I have noticed their contents."—"You are aware that the form of settling our accounts was *adopted by yourself*, in the winter of 1826-7, when you lived in a chamber in the third story of Mrs. Lecain's house, where I went to do the writing of them. Cold and warm drinks (iced or not iced) are sold *at the same price*; that is, at a half-real the glass, whether it be brandy, rum, punch, lemonade, or even water with *panades*. I am sorry you should suppose I was manœuvring, or 'hocus pocus-ing,' with Mr. D. and Doctor Escovedo. You wrote to D. yourself, and, I think, informed him of what you were going to do. He began to tell me his opinion, and desired me to communicate it to you; and then it was, that I requested him to write to you about it and to consult the Doctor. If this is 'hocus pocus,' I think it is a kind that every one ought to practise. You say that you do not mean to 'vex' yourself. Neither will I vex myself; particularly now, in my present state of health. In your letter of August 13th, you use marine phrases that I am unacquainted with; the wind appears to be unfavorable, and the deck lumbered up; if squalls should arise on a sudden the sailors might graze their shins. It is for you to say how you will keep your accounts respecting the price of ice at Boston; [that is, the price which he charged for the ice furnished to the Havana establishment.] I think you have changed your manner more than once.

"You have given me the gross sales of particular days in New Orleans and Charleston, several times. Will you be so good as to give me the gross sales and expenses for one year, and the estimated value of the buildings?"

himself estimated the value of the property at double the original price. It has been seen that he had done this; and, moreover, if he entertained no doubt as to the beneficial result of the experiment which was opposed by me, because I was convinced it would prove ruinous, he must consider the value of the property as still further to be enhanced by coming under his exclusive control. My purposed offer, therefore, would present to him the triple advantage, of making his property whole and entire, by an accession obtained at less than half its value, as estimated by himself; of freeing him from an obnoxious *partner*, who, according to his own endless reproaches, was always frustrating the wisest plans; and of enabling him to employ, — as he had repeatedly said he could do, — at one fourth of the compensation received by me, a *manager* who would not be so presumptuous as to hesitate in carrying his instructions into effect.

Such was the view which I took of the matter. But, as will be seen, I soon had my eyes opened to my folly in supposing, for a moment, that Mr. Tudor's course could, under any circumstances, be governed by justice or reason, or so much even as common sense with reference to his own interests, or by anything except *law*; law, at least, as he understood it, and meaning something altogether different from *equity*. His lawyer, perhaps, had told him, — at any rate, he had taken up the notion, — that I was *completely in his power*; and this power he was bent upon exercising, to the full indulgence of his imperial nature.

Previously to leaving Havana, I placed the ice-house provisionally in the charge of Mr. Samuel Davenport, a person known to Mr. Tudor as having once been connected with him in the ice-business at Charleston; if Mr. Tudor should be dissatisfied with his being employed, he was to be replaced by one of his own selection. To place Mr. Tudor's funds beyond all risk, I instructed Mr. Davenport to pay them, at stated periods, into the house of De Coninck, Spalding & Co., the successors of that of Scull, Storey & Co., who had been selected as his agents and attorneys at Havana, and who, in that capacity, had rendered him troublesome and gratuitous services. (g)

(g) Even this little circumstance, — the arrangement made by me for the security of his funds, (an arrangement, the necessity for which he afterward discovered to his cost,) furnished the occasion for no less than two displays of Mr. Tudor's nature.

In the one, he went so far "beside himself" as to make the simple circumstance of their having been requested by me to safe-keep his funds until his own pleasure could be known, the ground of gross insult to the house — as respectable a one as exists in any city in the world.

In the other, (by a letter in his usual style, under date March 21, 1835,) he upbraided me with a violation of orders in taking this step, and insisted that (what he supposed to be) the loss of interest and their commission on a remittance made

At Boston, we began with our accounts, which were settled down to the time being, without any difficulty. This settlement being effected, Mr. Tudor observed, "I want to make a new bargain with you." He then proposed that I should return to Havana, and take charge of the business at a fixed salary. This I declined acceding to, telling Mr. Tudor that, if he thought he could get the business managed more to his interest or satisfaction than it was by me, he had better buy my interest, by refunding me what I had paid him, and then appoint whomsoever he pleased. "*How? buy your interest?*" said Mr. Tudor; "*I did not know you had any interest to sell.*" Not a little astounded at this, I replied, "*Perhaps not, sir; but I have always thought that I owned one, and so I shall continue to think, until the contrary is established otherwise than by your say so.*" I then frankly informed him, that if he should attempt to maintain the ground he had just assumed, I should defend, to the utmost, what I conceived my just rights; and should his interests suffer in the contest, he must not blame me. I did not pretend I had a right to sell my share to any one except himself, unless it should be with his consent; but I did pretend to *own* one, which he could not deprive me of, directly or indirectly.

Shortly after this conversation, Mr. Tudor addressed a letter to a friend of mine in Boston, Col. Hobbs, referring to what he called my "threat," and desiring him to inform me, that if I should attempt to interfere in any way with *his* (!) property at Havana, he would retaliate upon my property in Boston. It will be seen, in the sequel, with what reckless wantonness this "threat" on his part was carried out; to what lengths he carried his abuse of legal process, designed for the security of those who have just grounds of proceeding; and how seriously I was thereby injured, by a man whose pecuniary condition makes it at least *doubtful* whether aught but additional loss, in the shape of law expenses, could result from seeking at his hands that redress which the law provides as a security against the malicious abuse of its process.

Under date, February 9, 1835, he writes me as follows:

"When you suggested to me that you would sell to me your fifth interest in the Havana ice-house and concern, I was very

to him, should be borne by me. I consented. But when the matter came to be closely looked into, it turned out that his business had been so managed by them as to leave a clear saving of some \$20 or \$30, as compared with the result which would have attended the fulfilment of those "orders," that had been "violated" by me, in not myself making the remittance to him: which, considering that my person happened to be at the time in Boston, was about as reasonably to be expected as a good many other things which constituted the grounds of Mr. Tudor's upbraidings. When this clear gain was ascertained, Mr. Tudor relented, and was so generous as to be willing to "pocket the loss" in this shape.

much surprised, as I had all along considered (h) your said interest was essentially founded on your residence in Havana; and, if I chose, as ice-house keeper. (i)

"I have been very much alarmed to think my ability to command your services, may be less than I had thought; (j) because, if you have an interest separate from this duty, which you owe me, to be performed on your part, I have sold you an interest which I never intended, and which you have never before claimed.

"I consider you as my agent in the Havana ice-business. I have always claimed all your services and denied you had a right to engage in any other business.

"By your offer to sell, I consider you set up a claim to a fifth which I never sold you."

Among various other things in this letter, he says, "It is always needful you should be in Havana, looking after the interests of the concern. Being ice-house keeper is separate, if I choose; and the rate to be allowed you for this I may regulate."

Here it is seen, that, in the face of the express letter of his own "Memorandum of Proposal," affording positive proof, that,

(h) "All along!" See above, *all along*, beginning with his original "Memorandum of Proposal." See particularly §5, note (e).

Upon this point, note also the following incident, trivial in itself, but of immense value as evidence in regard to what had *all along* been understood by both of us.

On the 7th November, 1828, I wrote to Mr. Tudor a letter, closing as follows:

"My object in going equally concerned with you at Matanzas was, to make money; that is, I thought Matanzas might be profitable; and while I was here, I should have about all my property nearly under my immediate inspection. But my views are somewhat changed: not that I think Matanzas will be unprofitable, but that I may change my place of residence sooner than I was then aware of. This, however, is not much more than conjecture at present; but not founded on the supposition that I should take more or less of the Matanzas business."

This was not much in the tone of a man who "*understood*" himself to be dependent upon the will of Mr. Frederic Tudor in regard to the faculty of changing his place of residence. And how is this responded to by him? Here is his response, and my answer:

Dec. 31, 1828. "In one of your late letters, there is a suggestion that you intended to leave Havana, and your present situation. If this is the case, let me be informed in season to provide another man."

Jan. 22, 1829. "As it respects the suggestion in one of my letters of Nov. last, of changing my place of residence, I will now only say, that my views of continuing in this place are somewhat different from what they were some time ago: but I shall not think of leaving, without giving you seasonable notice to procure another man; unless it is on account of sickness, and it shall be considered imminent danger to wait for my successor."

(i) As to whether he had or had not, in 1830-31, *chosen* that I should be ice-house keeper, see §5, — his final move in the game he had been playing for more than a year; and which ended with his extreme *anxiety* that the post should be held by me, — in preference to any one of his "fifty" — and one "excellent man, ready," — finally getting the better of his "just generosity."

(j) In regard to what he had *then* "thought" of his right or "ability to command" my services, see particularly his "just generosity" letter, of March 23, 1831.

even if I had partly acquired my share by residing at Havana, instead of paying for it wholly in money, as I had done, my obligation to reside at Havana would have extended only to *two years and a half*; in the face of this positive proof, Mr. Tudor pretends to the right to require me to be "*always* in Havana."

Not only does he here, — forgetting all the documentary proof of which I was in possession, beginning with his own original "Memorandum of Proposal," — not only does he here affirm, that the fifth interest, for which my money had been paid in 1824, (*when he had no Privilege, in which to sell a share,*) and which had since been *created* by my own exertions, is "essentially founded" on my residence in Havana, — but he affirms, further, that I have no choice but to be ice-house keeper so long as he may require it! On the penalty of forfeiting my share, I am bound, not only to continue forever to reside at Havana, but to remain forever in the post of ice-house keeper, "*if I (Frederic Tudor) choose!*" And this asseveration is coupled with the assertion of his right to fix the compensation of the ice-house keeper at whatever point he may please!!

After this, no one will wonder at his proving so entirely forgetful of all that had passed between us as to say, that he had "*never intended*" to sell me "an interest separate from this duty," meaning by "this duty," the double obligation to reside perpetually in Havana, and to hold the post of ice-house keeper so long as he might choose! "NEVER INTENDED!!" What an accurate memory does that of Mr. Frederic Tudor here prove itself to be! Who, after comparing this solemn asseveration with the tenor of his original "Memorandum of Proposal," (to say nothing of subsequent documents,) can entertain a shadow of doubt respecting the perfect and absolute accuracy of anything uttered by his lips, or written by his pen?

Such accuracy of remembrance would be truly incredible, but for the explanation afforded by another passage of the letter. It contains proof, that Mr. Tudor had been *refreshing his memory*. In what way? By referring to his "Memorandum of Proposal," and his subsequent writings? Not at all; perhaps he had not taken the trouble to retain a copy of that original document. At any rate, his devotion to law, — understanding always, by *law*, something different from *equity*, — was too great to permit him to resort to any such vulgar process for refreshing the memory. His was a *legal* one, far less troublesome, more expeditious, and more certain. He had, in order to know what it meant, been submitting that *bill of sale*, drawn up by his own hand, in 1824, to some lawyer, and this lawyer had told him that *this document left me completely at his mercy*.

This is the way in which Mr. Tudor's memory had been refreshed; and being so refreshed, it, of course, furnished him readily with everything that he wished, and enabled him to speak positively in regard to what he "had *all along* considered" to be the nature of the relation in which we stood.

Is the proof of this legal operation called for? Here it is, in this very letter. We have seen, in the foregoing extract, that he begins by saying, "I have been very much *alarmed* to think my ability to command your services may be less than I had thought." Immediately after the part extracted above, he refers to his *bill of sale*, of 1824, and goes into a long argument, (founded entirely on the *results* of our business *since the sale*, and on his own naked assertions,) to prove that he *could* not have sold me an interest on such very advantageous terms, except for the purpose of binding me to a *perpetual* residence at Havana. His letter closes as follows:

"I have looked into my rights, to see if I have any. I find them stronger, in black and white, than I thought; and it is my intention, — since you complain of my generosity, and call it hardness, — to give *you* justice and to have what is just *from* you."

The plain English of this is, that Mr. Tudor had got a lawyer to "look into" his *bill of sale*; as the thing, "in *black and white*," which was to decide what his relations towards me were. And the result of this "look" had been, the *discovery* that his rights were *stronger* than he *thought* — "I find them stronger than I thought." In other words, the lawyer had told him that, by the "black and white" of his *bill of sale*, I was completely *in his power*; his "*rights*" (!) were *found* to be stronger than he had thought. After this *discovery*, can any one wonder that he should be able to recall distinctly what he "had all along considered" to be the precise nature of our agreement? How then could he do otherwise, than recollect perfectly well, every thing respecting the nature of my "said interest," and of my obligations, *as agreed upon between us*? And how could this, our old agreement, possibly differ, in any respect, from the standard which had thus been just *found*?

Mr. Tudor adds to his letter the following postscript:

"I shall forthwith engage another person to go to Havana; but I shall not give him so favorable terms as I gave you; *the fifth interest which you have forfeited, I shall retain for my own benefit.*"

This was on the *ninth day of February*. On the 12th March, — that is to say, *one month and three days* after the foregoing final decree, — he writes me another letter, from which I make the following extracts:

"Sir, I have repeatedly and often asked you to go and look after the business of the ice, and ice business [thus in the original] at Havana. In your refusal to fulfil your duty, you have vexed me in every way in your power, and injured the business." — "I have no objection, upon your promise to follow your instructions, to give you the place of keeper as long as your health and inclinations shall induce and enable you to retain it, at a hundred dollars the month. With respect to uniting the fifth interest, and the ice-house keeper at ten per cent. of the gross sales, as one and indivisible, I shall not do it." — "Your refusal to go to Havana without being ice-house keeper, amounts to a refusal of fulfilling *the condition which gives you a fifth interest.*"

From this it appeared, that, owing to some cause or other, Mr. Tudor had thought fit to reconsider his peremptory decree of February 9th, and to revoke it. He had repeatedly told me, that there were plenty of "excellent men," who would be glad to engage in his service as ice-house keeper, for half of the compensation which he was so generous as to offer me. If he had allowed thirty-four days to pass over, — his interests suffering all the time, as he said, — without carrying into effect his determination "forthwith to engage another person," it could not, therefore, be because no such "other person" was to be found. We must consequently conclude, that either his "generosity" had returned, to resume its usual sway over his acts, or that some misgivings had arisen in regard to the absolute accuracy of his lawyer's *discovery* respecting the extent to which I was at his mercy.

Be this as it may, we here see that the immediate ground of difficulty with him, *for the present*, had become narrowed down to his old pretension to *reduce my compensation*. To this, does his letter substantially amount. He has "no objection" to "give" me the place of keeper, and to allow me to hold it so long as I may be able and willing to do so, provided I will acknowledge his right to reduce my compensation, — that compensation which, since his former attempt to reduce it, had been secured to me anew, by our settlement of 1831, and the "indenture" written by him on that occasion. This, as we have seen, had been entered into by him *at a time* when his position was so critical as to justify, perhaps, a little *diplomacy* on his part; a time when he stood in utmost need of my services; when there was no "new, and large, and permanent house," nor any ground upon which to erect one, to enable his contract with the Cabildo (obtained on my securityship, and by my instrumentality) to be carried into effect; at a time when Mr. Tudor was dependent

upon *me* for making the Privilege of any value to him. This was the time when, and the circumstances under which, his pretension to the right to reduce my compensation had been virtually relinquished, in a covenant written with his own hand; and now, when all had been accomplished by my exertions, when the ground had been obtained and the house had been built, (partly at my expense,) and the business stood upon a secure and permanent and prosperous footing, — now, was the time for his renewing this attempt, in the face of the assurance against its renewal afforded by his own written agreement! Now was the time, too, for making sure of its success, by broaching his newly-discovered theory in regard to what he had “all along understood” to be the true meaning and intent of our partnership agreement, — a theory which, in its “just generosity,” magnanimously gave me the option, either to retain the post of ice-house keeper, under an acknowledgment of his right to fix the compensation at whatever point he might now and from time to time see fit, or to “be *always* in Havana, [without *any* compensation] looking after the interests of the concern,” as the only alternative to having my fifth interest confiscated unto “my [Mr. Tudor’s] own benefit”!!

Supposing me willing to retain the post on these terms, all would be well *for the present*. Indeed, for the present, the *only* “practical” difficulty, — that is to say, the only dollars and cents difficulty, — between us, turned upon the old point, first stated in 1825, whether Mr. Tudor should cure me of all my viciousness as ice-house keeper, by his “remedy” of swallowing one half of my ten per cent. If I would consent to his doing so, then my cure, *for the time being*, would be accomplished, my fitness restored, and he would “give” me the post again. To be sure, he annexes to this gracious offer the condition, that I shall “promise to follow instructions;” but this, under existing circumstances, was a vague generality, which could have been introduced only to keep up the tone of master, and to save appearances in regard to the difference which had last divided us, and his course in reference to which had been the cause of my visit to Boston. This, it will be recollected, was his “instruction” immediately to reduce the price of ice, — a point upon which his conviction had been so deliberate and mature, and his determination so fixed, that my presumption in offering objections to it, instead of carrying it instantly into effect, had been viewed as nothing short of high treason. And yet, since my departure from Havana, the folly of this “fixed determination” had become so apparent, even to himself, that the order had been

revoked, by instructions to the person then in charge of the ice-house, *not to make any reduction.* (k)

Thus, then, in place of the ground of difficulty which had caused me to leave Havana, was now substituted a totally different one, in the shape of a renewal of the old pretension to reduce my compensation, backed by a new theory concerning what he had "all along understood"!

§ 8. — 1835 — 6. — *My Return to Havana, in March, 1835. — The Person placed by me in charge of the Ice-House refuses to allow me to resume it, and holds out as the Agent of Mr. Tudor. — My Visit to Boston in May, 1835. — Mr. Tudor's Refusal to listen to me. — Legal Proceedings instituted by me. — Decision of the Juez Avenidor in my favor. — Decision of the Tribunal of Commerce in my favor. — Appeal taken by Mr. Tudor to the Alzadas. — The Case remanded back to the Tribunal of Commerce. — Pending these Proceedings, Mr. Tudor pockets my Money. — The Case carried by me into the Supreme Court. — Possession of the Ice-House restored to me in November, 1836, by Sentence of the Supreme Court.*

I HAD lingered at Boston, in the hope that Mr. Tudor would finally dismount his high horse and listen to the voice of reason and justice. This hope proving vain, I determined to return to Havana and see what effect this step might have in inducing him to adopt a rational course.

On my arrival at Havana, at the end of March, 1835, I was informed by Mr. Davenport that he would restore his charge to me, provided I would accept it on the terms proposed by Mr. Tudor, but not otherwise.

Finding myself thus circumvented, a justifiable way, perhaps, of frustrating the unfair proceeding by which I was juggled out of the actual possession (l) of the ice-house, would have been

(k) It may be added, that, although, as will presently be seen, I was kept out of possession of the ice-house two years, by an agent under Mr. Tudor's exclusive direction, yet he allowed this long period to pass without availing himself of the opportunity to carry into effect this, his favorite and vitally important measure. During all this time, its imperative and urgent necessity lay dormant; and it was not until after I had recovered possession, and he had again become intent on war with me, that it again pressed upon his mind. See a previous note, (d.)

(l) Of the estimate put by Mr. Tudor upon the value of this advantage, an idea is afforded by the following extract from his letter of Dec. 22, 1824, the period at which, as we have seen, he was constantly ringing in my ears, "obey orders, if you break owners," and this with reference to his "instructions," not only to trample under foot his own solemn engagements towards the municipal authorities, entered into at the time when he had obtained from them the favor of a Privilege, but also to set at defiance the whole political power of the State! How far this estimate of the importance of *possession* entered into his calculations respecting the *possibility* of my successfully asserting my *right* by a law-suit, supposing I should

to reinstate myself by a feigned acquiescence, and thus recover the vantage ground which I had been manœvered out of. I had gone to Boston *for the purpose* of settling with Mr. Tudor *the difficulty* arising from his "fixed determination" *to reduce the price of ice*; and disposed, if he should prove inflexible upon this point, to remove the obstacle to the accomplishment of what he deemed so essential to his interests, by sacrificing to him my share of the property for one half of what he himself had valued it at. This "fixed determination" of his, instead of being persisted in, had been voluntarily reversed by him. But instead of this being attended with the effect of restoring harmony between us, he *had substituted a totally different ground of difficulty*; and this was now used as the pretext for availing himself of my visit to Boston, in the way we see. Against a proceeding so unfair, it would, perhaps, have been excusable to resort to counter stratagem.

Averse, however, to all indirectness of proceeding; and, at the same time, exceedingly desirous to avoid, if possible, the expense and trouble of a legal controversy, I determined to return to Boston, and make a final effort to arrange the matter amicably. I arrived there in May, and renewed to Mr. Tudor my proposal that he should, if the terms of our subsisting agreement were unsatisfactory to him, re-purchase the share he had sold me, by refunding the money I had paid for it. The only answer I could obtain from him was, "*You have no interest in the ice-business. I have taken my stand, and you may take yours.*"

I therefore yielded to the necessity of returning to Havana, to seek such redress as might be afforded by the laws of the country where the property was. (U)

have the temerity to venture into one; and how far his course at the present juncture was influenced by such calculations, I leave it to the reader to conjecture.

"*Possession*, as I have before written you, in a Spanish country, is *more* than nine points in the law, and, although I have no title to the land on which the ice-house is built, am an alien, and a heretic, according to their laws, it would take all the power of the king of Spain to remove the ice-house, in a less time than six years, if I was disposed to dispute the point with him. When a man has once possession of anything, particularly of land, it is *everything* in a Spanish country."

The reader may judge how little the imperial gentleman's slumbers can have been disturbed at the thought of the "poor miserable carpenter's" rebelling against the confiscation. Under any circumstances, *his* daring to go to law would be a piece of folly, that could be measured only by comparing it with the audacity of the bare conception; but, under existing circumstances, it would only be requisite to keep him at arm's length for *four years*!! by which time, the Privilege would have expired; and then the case would present new difficulties and new points to be discussed and argued.

(U) My choice of a *forum* has been found fault with by Mr. Tudor, and adduced as evidence of ill-faith on my part. According to him, my suit ought to have been instituted *at Boston*, because our "contract," as he calls it, is written in the English language, and the courts there would have no difficulty in settling its true import.

The first step which these required of me was, to seek to compose the difference amicably, by summoning Mr. Davenport, as the representative of Mr. Tudor, before the *Juez Avenidor*, or Magistrate of Mediation. The opinion formed by this magistrate (*Don Juan Montalvo*) was, that the possession and arrangement of the ice-house rightfully belonged to me; and he advised Mr. D. to restore it.

Compliance being refused, the next step for me was, to institute suit in the Tribunal of Commerce, — a body composed, not of lawyers, but of eminent merchants, whose decisions, though founded upon the code of commercial law, are governed less by mere technical points, than by the substantial merits of the cases presented to them, and for this reason are looked upon with great confidence. Here, a decision was given in my favor by *Don Joaquin Gomez*, *Don Joaquin Aizpurua* and *Don Francisco Hornillos*, — three names so favorably known in Havana, and elsewhere, that I am proud to write them, in connection with that of *Don Juan Montalvo*, as those of persons in whose judgments my cause was just, and my claim lawful. By their sentence it was decided, that the possession and management of the ice-house rightfully belonged to me. But, inasmuch as, in the pleadings on behalf of Mr. Tudor, it had been alleged, (an allegation, to which his own written assurances shortly after, as well as long before, will be seen to give the lie,) *that he had lost all confidence in my honesty*, the Court decided also, that, until Mr. Tudor should have time to appear in person or by attorney, to make good the grounds of his alleged distrust, Mr. Davenport should, as his agent, be provisionally associated with me in the management, so far as to see into my doings. (*m*)

But what was the nature of my claim? It was, *first*, that I was the true, and just, and lawful owner of a certain share in a certain Privilege granted by the Government of Havana, and in certain *real* property connected with it; and *secondly*, that I was entitled to the custody and management of said property, at a certain compensation. Leaving out of view the question as it regards the Privilege, what authority could any courts but those of Spain have, to decide upon that question as it regards the property?

But, even if the case had involved nothing but a question of mere *contract*, and not of *property*, the position in which Mr. Tudor stood at *Boston*, in regard to mere *creditors*, might, perhaps, have been deemed, by a competent and cautious lawyer, a sufficient reason for suing him, — even for a mere money debt, — at Havana in preference to Boston.

This is a point which may be left to the business-men and the lawyers of Boston. But, at any rate, my object was, not to recover money from Mr. Tudor, or to obtain against him a money-judgment, which might prove barren of money. It was to recover possession of a specific piece of *real property*, of which I deemed myself to be, according to law and *equity*, part *owner*, and the rightful *manager*.

(*m*) The *extreme delicacy* of this decision towards the interests of Mr. Tudor, is made apparent by the article of the commercial code upon which it is based, and which gave him this right to appoint a co-administrator, as it is termed, only *after* he should have established, that I made an "improper use" of the power en-

This decision, so manifestly fair and equitable, which opened the door to Mr. Tudor, to come forward openly, and divest me, in a just and legal way, — if he had just and legal grounds for so doing, — of that which he had surreptitiously choused me out of, and unjustly and illegally withheld, and which, meanwhile, afforded him absolute security against my defrauding him, — this decision did not suit Mr. Tudor's purpose. This, — as is proved by the course pursued by him so long as it lay in his power to pursue it, — was not merely to keep the *management* of the property in his own hands, but, on the pretext that I had forfeited my interest, *actually to deprive me of my share of the profits!*

Instead of the possession being restored to me, — as was so manifestly required by law, and decreed too, by this decision, — Mr. Davenport held out, and the case was carried by him into the *Alzadas*, or First Court of Appeals. Here it was, — on a purely technical ground, having no reference to the substantial justice of the case, — remanded back to the Tribunal of Commerce, to be commenced anew. (n)

trusted to me as managing partner, and that “*manifest detriment*” to the concern resulted from my conduct.

This article provides, that when the signature of a firm, or the custody and management of any property and business is, by the terms of the act of partnership, expressly entrusted to one of the partners exclusively, he cannot, *for any cause whatever*, be deprived of it. But if he should make an *improper use* of the power confided to him, and *manifest detriment* to the concern should result from his management, the other partners may appoint a co-administrator, to intervene in the transactions; or they may bring suit before the proper tribunal for the rescission of the contract.

From the application of this article to our case, it is seen that the document appealed to by both parties, (Mr. Tudor's bill of sale,) was considered as *expressly* giving to John W. Damon, *exclusively*, the custody and management of the property and business at *Havana*, at the compensation therein fixed.

In regard to Mr Tudor's “right of instructing,” and his allegations of disobedience of orders, and other misconduct, and his averments of utter loss of confidence in my honesty; these were all matters, the consideration of which was, in the present case, absolutely precluded by the express letter of the law; it having established the remedy which it deemed appropriate for such wrongs, to wit: *first*, the appointment of a co-administrator; and *second*, the rescission of the contract, the decree for which, when obtained from the proper tribunal, would divest me of the possession of any property which might appear not to be mine. But, meanwhile, the express letter of the law forbade that I should, *for any cause whatever*, be divested of the possession and management which I had held. *Even by the action of the tribunals*, this could not be done; and, *a fortiori*, not by the mere act of a party, alleging himself to be aggrieved, and taking the law into his own hands.

Such was the view taken of the case; and according to this view, Mr. Tudor ought, in strictness, not to have been allowed to keep Mr. Davenport, or any other agent of his, for an instant longer, in the ice-house; nor to replace one there, until he should prove, that the case had arisen for the appointment of a co-administrator, by establishing his right so to act, upon the grounds defined by law. But in this point, the Court, through considerations of refined equity, and through extreme tenderness towards the interests of Mr. Tudor, thought fit to give them at once the benefit of this security.

(n) From a letter written by Mr. Tudor, after the termination of this suit, and from other circumstances, it is pretty plain that he was kept very much in the

Thus driven from pillar to post, whilst Mr. Tudor was quietly enjoying the fruits of his stratagem, and pocketing money which belonged to me, but which, once appropriated by him, I could not, owing to his peculiar situation, entertain much hope of ever recovering by an action against him at Boston, except in the shape of a barren judgment,—thus driven from pillar to post, I determined to adopt the shortest course for bringing the case to a close, and carried it, by appeal, into the *Audiencia*, or Supreme Court, then sitting at Principe.

dark respecting the progress of our litigation. Besides his own disposition to do so, all those acting in his name, had very obvious and very substantial motives for keeping up the game as long as they could, regardless of the ultimate consequences to him, no less than to me. Mr. Davenport, for one, besides the motive presented by his compensation as ice-house keeper, made use of the building as a cigar factory, which,—under the facilities afforded by a large establishment free of rent, not to mention others,—rapidly extended its scale of operations.

In the letter referred to, Mr. Tudor, reproaching me for having taken the case into the Supreme Court, says, “the law case between us was justly decided once, by a high and honorable Court, where there was no bias used except a plain examination of facts, and a decision accordingly.”

Now, the fact of the matter was, that there was no “decision” whatever, but nothing but *delay*, in this proceeding, whereby Mr. Tudor supposes that the case “was justly decided once.” In my reply, I tell him:

“You say, the law case between us was justly decided once, by a high and honorable Court; &c., &c.; and you also speak disrespectfully of the sentence pronounced by the *Real Audiencia*. I believe you have been misinformed during the whole progress of the suit. The first sentence given in my favor was in the *Consulado* (or Commercial Court.) The Judges were, Don Joaquin Gomez, Don Francisco Hornillos and Don Joaquin Aizpurua,—all, I believe, natives of old Spain.

“Don Joaquin Gomez is probably the richest merchant in Havana. Messrs. Hornillos and Aizpurua, were partners in commerce in this city, to a great extent of business, until a few years since; they are now, I believe, planters. The lawyer who assisted them at that time, as their legal adviser, held his appointment from the king. He is since dead. I am told that he was upwards of eighty years old, and one of the first lawyers of the city. Davenport, at the time, asked for a re-hearing, and the Court offered to consult their legal adviser, whether there should be a re-hearing or not. Davenport challenged him; and the Court offered to consult another lawyer, who also was challenged. It then offered to consult another, and he also was challenged. It then came to the fourth, when the law allows no more challenging. This fourth has the title of Honorary Auditor of War, and he refused them the re-hearing in that Court, and gave them the appeal to the higher Court.

“The high and honorable Court” you make mention of, was composed of the second and third *Tenientes Gobernadores*, or legal advisers of the Governor, and the legal adviser of the Intendant. Their decision was, to remand the case back to the *Consulado*, and place it in the same state it was before the sentence from which Davenport had appealed, without giving any reason why or wherefore it ought to be thus remanded back. From this decision I appealed to the Supreme Court at Principe; and this Court saw fit to reverse the decision remanding the suit, and to confirm the one from which Davenport had appealed.”

“Mr. Bacon tells me, that you suppose I obtained the sentence at Principe by bribery. If any hints of this kind have gone to you from Davenport, or anybody here, nothing can be more calumnious and false. My going to Principe could have had no other influence than to bring the case before the Court earlier than it would otherwise have been; for, *through the whole course of the suit, the great object of my opponent appears to have been DELAY*; and this disposition was as manifest at Principe as it had before been at Havana.”

The sentence of the *Audiencia*, rendered on the 29th October, 1836, annulled the decree of the *Alzadas*; and, referring to Article 307, of the Code of Commerce, and to the documents produced by the parties, confirmed the decision of the Tribunal of Commerce, establishing my right to the administration.

It confirmed it also, in regard to the provisional appointment of Mr. Tudor's agent as co-administrator; deciding, that, if the allegation of grounds for such an appointment should be substantiated in the Court below, it should continue until the expiration of the existing Privilege; this being considered as the term of the contract between Mr. Tudor and myself.

In pursuance of this sentence, (which still left him the right to bring the proper action for obtaining the rescission of the partnership, and thus *lawfully* depriving me of the management of the property) I was, on the 26th November, 1836, reinstated in the custody of the ice-house, of which I had been unlawfully deprived for nearly two years, during which Mr. Tudor had availed himself of the opportunity to *pocket my money*. His agent was now *compelled* to surrender, and to content himself with the office assigned him by the sentence, which gave him the right to be an eye-witness of the sales, &c., and to keep an account of them. He refused, however, to pay me anything on account of my fifth share, or even to let me see the accounts for any part of the period during which he had maintained this wrongful possession. I then applied to Mr. Tudor for the accounts, but in vain; and, perfectly obvious as was the legality, no less than the justice, of such a demand, as a necessary consequence of the decision given in my favor, yet I should nevertheless have been driven to further legal proceedings to enforce it, had not events taken a turn which precluded the necessity. For a long while, however, they were withheld; so that, although, when restored to the possession of the establishment, it was incumbent upon me to meet every just demand upon it, as well as to see to the collection of anything due to it, I was kept without the means of knowing aught respecting its position in either respect.

In order to preclude all possible ground for the charge of suppressing any fact which could be deemed, by any one, as at all material to the perfect fidelity of this narrative, I will close the present division of the subject, with a letter received by me, from Mr. Tudor, after my suit against him had been commenced.

It will be seen to contain a statement of "the principle question between us," which presents a considerably nearer "approach to accuracy," (to borrow from him an expression used with reference to the "difficulties" of justly stating his accounts) than is

common to things coming from his pen. Nevertheless, it is quite far from being accurate, as the reader, — should his recollection need refreshing, — will see on turning to § 7.

It will be seen, too, that he here contemplates my proceedings with all proper equanimity, and even with complacency, and acknowledges that I do "right to appeal to" the laws, provided they are in my favor. But it will be seen, that this equanimity deserted him in the hour of trial; and that, when this came, he thought I had done very far from "right," in so wantonly "harrassing with law-suits" one who had ever proved a kind and noble benefactor." That is to say, so long as he confided in his doctrine that "*possession*, in a Spanish country, is *more* than nine points in the law," I was welcome to all the benefit I could obtain by butting my head against the hard walls of the impregnable fortress; but so soon as he found that Spanish law was not quite so bad as he had fancied, then, my conduct had been the most nefarious in treating *him* in such a way. [See the next §.]

July 8, 1835. "I am very desirous of having you return to your duty, and reinstate yourself (as I have offered you) in rights of which your proceedings since January have deprived you, to my great injury.

"I have repeatedly told you, and I now again write you, that I consider it rather a loss to me to have the whole of the Havana ice business, as I have at this time, than to have my interest of four fifths protected and looked after as it would be if you fulfilled your engagements.

"The day on which you agree to return to your duty to the concern, will be the day when your interest will attach again. I am willing to begin it on the day when you come to a right course of thinking and acting, agreeable to my original conveyance of the fifth interest. Although all your interest is forfeited, for breach of conditions, I am willing it shall revive upon your agreement to fulfil the condition.

"You may gain some temporary advantages by interrupting my business in Havana, but such a course can, in the end, do you no good.

"The principal question between us is simply whether you can be keeper, whether I will or not. If the laws of any country will show you to be right upon this point, you do right to appeal to them; but my opinion is, the laws of no country will do so.

"I am sorry our long connection is to end by an unprofitable law-suit. But if you attach me, I shall endeavor to defend myself in the best way I can."

§ 9.— Nov. 1836, to July, 1837.— *Deplorable Condition of the Ice-House, and Imminent Risk of the Penalty of \$ 4,000 for a Failure of Supply.— Mr. Tudor's Treachery.— Arrival of his new Agent, Mr. Bacon, with a Cargo of Ice.—His Demand and Stratagem, and the Result.— Provisional Agreement with Bacon.—He refuses to sign Receipts, for Money tendered to him for Mr. Tudor.— All Differences between Mr. Tudor and myself referred to Arbitration.— Delays interposed by Bacon.— His Last Proposal.— His Death.— Mr. Tudor's Determination to renew Litigation.— His Letter of January 11th, 1837.— My Letter of December 17th, 1836.— My Letter of February 11th, 1837.— My Subsequent Letters.*

CONDITION OF THE ICE-HOUSE. On being reinstated in my right, my first care was, to examine into the condition of the concern; and I found it such as abundantly to justify the assertion made in Mr. Tudor's letter of March 12, 1835, that my separation from the management "injured the business." The ice-house had been converted into an extensive cigar factory and store-house for cigars, carried on by Mr. Davenport, on his own private account; and to some extent, if not chiefly, by means of the resources which came into his hands as the receiver of the money arising from the sales of ice. Besides being lumbered up on all sides with cigar boxes, and with the tables and benches of the workmen, so as actually not to leave room for the daily operations relating to the ice business, the establishment exhibited throughout, every possible indication of neglect, mismanagement and dilapidation, so far as regarded the purpose for which it had been erected, (o) and to which the permission for its erection, had, as we have seen, been expressly restricted. The worst of all these proofs of neglect was, that *the stock of ice had been allowed to get so low as to expose us to imminent risk of incurring the penalty of \$ 4000, provided in the contract for a failure of supply.*

MR. TUDOR'S TREACHERY. I had been put in possession of the ice-house, late in the afternoon of the 26th November, 1836. On the 29th of the same month, I wrote to Mr. Tudor, communicating a copy of the sentence of the Court, and giving a detailed account of the condition of the establishment, including a precise statement of the quantity of ice on hand. My letter closes as follows:

(o) On the 6th of October following, Mr. Tudor acknowledged that my "sales appear to exceed Davenport's twenty per cent."

"I have commenced procuring shavings, (oo) to see if I can preserve what little ice there is, until some more can be sent, so as to prevent the fine from being levied for want of supply. These are some of the most important things which come to my mind at present to communicate to you for your government; and as Mr. Davenport has currently circulated the word in this place, that, if I should ever get charge of the ice-house again, you would refuse to send any further supply of ice here, I enclose this letter to Colonel Hobbs, requesting him to hand it to you immediately on his receiving it, and to request of you an answer whether you ever did communicate to Mr. D. such intention of punishing the inhabitants of this place by not sending them any more ice." (p)

The friend charged with the delivery of this letter was requested, should Mr. Tudor's answer confirm the report alluded to by me, to make preparations for shipping me a cargo of ice.

On the 17th December, I wrote, requesting this friend, unless Mr. Tudor should already have told him, "in such positive terms that it is impossible to mistake him," that "he is about sending a supply of ice, and that *immediately*," to see him forthwith and ascertain his determination in regard to the matter, and should he not receive a positive assurance that a supply was to be immediately despatched, then to take up the first vessel and send me some ice with all possible despatch; "for I

(oo) See a subsequent note, (d), to my letter of Dec. 17.

(p) The following is an extract from a letter written by me to a friend in Boston, under date February 19, 1836. The latter part relates to the subject now before us. From the first part, it is seen, that, in the suit then pending between us, which was terminated at the close of the year, by the decision of the Supreme Court, in my favor, Mr. Tudor, — not satisfied with insisting that my fifth interest had been forfeited, — attempted to make it appear that the sale of that fifth to me *had been void from the beginning!* And this, because his contract with the Government had provided that it should not be transferable! What would a Boston Court, or a Boston Jury, think of such pleading as this? Would they think that the cause which was deemed to require a resort to it must necessarily be so essentially strong, that its loss could be ascribed to *bribery* alone? And, yet, many people in Boston, and elsewhere, have been made to believe in this calumny against the Supreme Court at Principe, and against me.

"To show you that there is a determination to rout me, if it can be accomplished, Davenport has brought forward, in his *alegato*, Tudor's contract with the Government, showing that Tudor *cannot alienate or transfer it to another!* Whether this will have any influence with the Court, I cannot say. But, if anything, it ought to show the Court that Tudor did, for a consideration, alienate a *portion* of the contract; and now, for his convenience, wants to take it back without restoring the consideration he received. A man that will work such double-dealing ought to be set in the pillory, to let people know who he is, and how to treat with him.

"Davenport has told one man, that he thought Tudor would not send ice if I got the house again. But, said the man, there is a penalty if he does not keep the supply good. Never mind, said Davenport, if Tudor takes such a thing into his head he will carry it through. So it is possible Tudor may have intimated such a thing to Davenport."

think the present supply will not last longer than the 1st of February."

Late in January, I received my friend's reply, under date December 20th, 1836, in which he says:

"I received your letter yesterday, enclosing one to Mr. Tudor, with instructions to deliver it to him, which I promptly performed.

"To the question there proposed, he made no direct answer; but his remarks were to the point, that you had wrongfully got possession of his property, and that he should be very simple to place any more in the same situation. The report of Mr. Davenport, he neither confirmed nor denied; but from the whole tenor of his conversation, I am clearly of opinion, that he will not ship any more ice to you." — "When I left his room, he said he would see me again." Mr. Tudor did see him again; and here commences a proceeding on his part, to which I invite particular attention; not simply on account of its own intrinsic importance, but chiefly as *evidence*; as evidence in regard to what Mr. Tudor, — whether because habitually under the dominion of blind passion, or from this and other causes combined, I shall not undertake to pronounce, — is capable of; and, consequently, in regard to the degree of confidence which may be placed in the rectitude of his course towards me, generally. The course, I mean, which he had thus far pursued, and that which he subsequently pursued, including his asseverations in regard to the nature of that understanding and agreement, upon the strength of which I had been induced to become his partner.

The reader is apprised of the critical position in which I stood, at this juncture, in regard to the failure of a supply of ice, the penalty for which was no less than \$4,000; and this penalty *secured by mortgage on my individual property*. Immediately on receiving the last mentioned letter, I replied to my friend, saying: "If Mr. Tudor has persisted in not sending me some ice, I hope that ere this you have a cargo on the way for me; as *I am the one who stands responsible for the penal part of the contract*." And, in a postscript to the duplicate of this letter, I say: "If he (Tudor) refuses to answer you, or does not give you anything satisfactory, I wish you to ship me some ice immediately, without regard to any remonstrances from Mr. Tudor whatever; for if he does not send the ice, it is evident that he intends to injure me on that score, also, if he can; and you will see the necessity of sending the ice. If you do send the ice, and he should make opposition, his intentions will be so clear to the Government, that I shall be able to obtain justice speedily.

If Mr. Tudor will go on smoothly, I have no disposition different from what I had in 1821."

But my friend had *not* taken any steps to save me from the impending failure and its consequences. And why? The reason will presently be seen. The reader will recollect, that my order for a shipment of ice was contingent, it was to be executed only in the event of Mr. Tudor's failing to answer my enquiry, "in such positive terms that it is *impossible* to mistake him," and say "he is about sending a supply of ice, and that immediately." Well, then, on the 21st December, 1836,—the second day after the delivery of my letter, by Col. Hobbs,—Mr. Tudor writes me a letter, beginning with these words:

"Col. Hobbs has brought me your letter, and asked me whether I intend to ship more ice to Havana. *My answer is, that I do.*"

Such is Mr. Tudor's "*answer*" to my *inquiry*; that inquiry which, as he knew, was suggested, not merely by the desire that our joint business should not suffer through a failure of supply, but by the peculiar danger to which I was exposed, in consequence of the penalty being secured by mortgage on my property. (q)

This being what he expressly gives as his answer to my inquiry, and these being the circumstances under which the inquiry had been made, and the answer given, the question presents itself: what is the *precise meaning* of the answer, in its bearing upon these circumstances? Does it, or does it not, convey to me the assurance, that I may make myself easy? that,

(q) When this mortgage was first mentioned, I omitted to state, that it was deemed by Mr. Tudor's own lawyer, just and proper towards me, that he should be bound to have it raised within six months after the time when it was given; and a deed to that effect was drawn up by him, and executed by Mr. Tudor's attorneys. But, to its being raised, it was requisite that a mortgage on other real estate should be substituted in its place; and where was Mr. Tudor to get real property at Havana, upon which to give this new mortgage? or where was the owner of such property, who, to oblige him, would subject it to such encumbrances? The difficulty was insurmountable; and the consequence was, that my property remained mortgaged.

About two years prior to the period with which we are now occupied, thinking that I might find myself under the necessity of selling this property,—in order to find means for maintaining myself, as well as for the law expenses to which Mr. Tudor's injustice subjected me,—I called upon him to fulfil his notarial obligation, in regard to raising the mortgage. To this demand, he could not have the face to raise any objection; and he took one step towards meeting it. But here he stopped. Indeed, it was impossible to go through with it, except by buying real property, or by paying some one possessing such property the necessary inducement to subject it to mortgage; and Mr. Tudor was not, it seems, the man to take any such step.

These were the circumstances under which Mr. Tudor had, for a space of six or seven years, been enjoying the benefit,—in the proportion of *four fifths* to my *one fifth*,—of the mortgage, from which the most serious consequences were now impending over me.

so far as depends upon the writer, ice shall be despatched to Havana, (that is to say, to *the Havana ice-house*) in time to prevent, and *for the express purpose* of preventing, that impending failure to which the penalty is attached? Is this the meaning of the words, weighed and considered with reference to the facts of the case, in regard to which they are uttered? If this be their meaning, it remains to see whether this meaning be altered or qualified by anything else contained in the letter. To make sure, we must read the whole of it. Here it is:

Dec. 21, 1836. "Col. Hobbs has brought me your letter, and asked me whether I intended to ship more ice to Havana. My answer is, that I do.

"You write me, that you 'have been put in possession' of my ice-house, against my will, and in violation of our agreements, often and again recognized and admitted by yourself. (r)

"It appears, therefore, I have no remedy but to build a new house, and to hold you liable, which I do, for all the costs, damages, and expenses of all kinds, which your extraordinary conduct towards me and the business, causes.

"The law case between us was justly decided once, by a high and honorable Court, where there was no bias used, except a plain examination of facts, and a decision had accordingly.

"There is something in the very position in which you are now placed, which shows the absurdity of the reversal of the decision I have spoken of. (s) You are placed, by force, in my ice-house; and, without power over your doings, (t) I am to ship you ice, and you are to pocket the money, or do what you please with it. You do not inform me, you will remit it; you do not ask me, what are my instructions; but you are 'put in possession of the ice-house.' *Whose* ice-house? is it mine, or whose is it? (u)

"When I review the origin and long continuance of the connections and employ which there has been by me given, in your case, and the opportunities which I have offered you, of reaping a rich reward, I confess myself surprised at the return which

(r) Untrue.

(s) As has already been explained [See § 7] "the decision" here "spoken of" was no decision at all; it was *dead le-way* and nothing else; pure *delay*; delay, during the whole length of which, so long as it should be in the power of my opponents to protract the game, law expenses would be growing; Mr. Davenport's cigar factory would be fructifying and multiplying; the amount of sales would be falling short, "twenty per cent.;" Mr. Tudor would be compensating himself for the deficit, by pocketing my fifth share of the profits, in addition to my ten per cent. compensation; and Mr. John W. Damon might shift for himself.

(t) Just exactly the same power that he ever had; no *more*, but no *less*.

(u) Very easily answered: Mr. *Tudor's* ice-house, — *four* fifths of it; and Mr. *Damon's* ice-house, — *one* fifth of it.

you have made me. Allowing that I was wrong in saying to you, (after I had made you such liberal terms for years,) that I should now reduce them to the reasonable rate of \$100 a month; allowing this to be bad *policy*, you cannot deny the right which I always had to regulate the pay, as ice-house keeper, at the same time that I offered that you might go and come as you pleased.

"You are now willing to attempt to ruin and destroy my business,—harass me with law suits.(v) I say, therefore, the return which you make me, is one which you can consider no otherwise, than one unworthy an honorable man.

"The temporary advantage which you gained at Principe, I considered as of small moment; it only adds to the expenses which attend all lawsuits. The suits at law, in this business, I consider as barely commenced; and the total destruction of the business, as far as respects profits, I have no doubt, will come with 1837.

"I have neither inclination or intention to relax, in the smallest degree, the entire assertion of my rights, and I warn you to cease from further mischief and molestation.

"A return to a correct sense of the duty you owe yourself, in your proceedings towards me, will be met by me with a proper spirit. The continuance of a hostile attitude is wasteful of all former prosperity; and any real victory over me, and essential harm done permanently to my business, in Havana, I cannot make up my mind to believe, would afford you gratification. I have now to conclude with offering you what I offered in Boston: upon which terms I will bury the hatchet; and you may come home, and we will set off anew and endeavor to be friends again; which, doubtless, we shall be, if you can make up your mind to return to those innocent principles of integrity which, I trust, still live in the mind of J. W. Damon.

"If those early principles and feelings have ceased to exist, as far as respects me, why, then, accept the harsher and more vio-

(v) "Harass me with law suits!" And this comes from the man who had refused to listen to me; and from whom I could get, for my only reply, "*I have taken my stand, and you may take yours*;" which "stand" had been, to affirm that I had forfeited all right and interest whatever in the establishment, and to notify to me, "the fifth interest which you have forfeited, I shall retain for my benefit." The man who had taken this "stand;" who had maintained it vigorously to the very letter; and whose agent had made it his special study to do me every possible injury, and to heap upon me every possible indignity, that can be done or offered by acts, by deportment, or by language; this, is the man who, when the long struggle, which he had driven me to engage in, had resulted in restoring to me the possession of an establishment which I was managing for his interest, no less than my own, reproaches me with harassing him with lawsuits, and with being "willing to attempt to ruin and destroy my business;" a business which could not be injured without injury to myself!

lent parts of my letter ; and put me to the proof : go on, and let us use up in war, all the gold and silver which peace made and would increase."

This is the whole body of the letter ; and then comes a long postscript, as follows :

" *Nota Bene* : The weather has been of the same character as the beginning of the winter of 1828, when the ice failed almost wholly. You recollect what a disastrous winter that was to the business. It was the year when my chaise broke down, in Charlestown, when you were riding with me : the cold commenced early and then failed altogether. The same, so far, has been the case here, the present season. We had great snows in October, and cold in November, so that in the early part of the present month, the ice in shallow ponds had reached seven inches in thickness ; it has since been growing thin, — has nearly left Fresh Pond, and is not above two to three inches in shallow waters. The shipments made to Rio Janeiro and St. Jago have cleared out all the remains of the ice-houses about town ; and I hold *all there is*, (*w*) which is in a distant ice-house, which I purchased the contents of, say 1300 tons, at \$ 2-75, intending it for New Orleans, and being alarmed for the winter.

" I do not think we shall lose the winter, but I think no new ice can be obtained for a month. (*w*) I propose shipping, immediately, a small supply to Havana, as soon as I can prepare materials for a temporary ice-house, not knowing the course you may determine upon. In the meantime, if the ice is likely to fail, *protest* ought to be made against the anomalous winter, which prevents new ice from forming. If you determine upon peace, you should forthwith take passage home ; putting in your place any one you may prefer ; all will be done here which can be done ; and if you come in amity, arrangements will be made, so that the expenses contemplated, will be greatly reduced, and the materials will be such as to be of use in repairs and improvements, if not used in the temporary house I have in mind."

(*w*) Therefore, by the by, you need not flatter yourself with any hope of being relieved from your position, by shipments of ice from your friend, Col. H., or any one else.

Was this long palaver, in the shape of a postscript, (called, in this instance, "*Nota Bene*") written in the design, that, without his seeming to have any such intention, a strong sense of my utter dependence upon *him* might be gently insinuated into my mind ? This is a matter for conjecture only. I leave it to the reader to draw his own inference ; upon due consideration of the circumstances under which this letter was written, and the nature of the stratagem which the arrival of the "small supply" at Havana served to disclose, one thing is certain : Mr. Tudor had no reason to believe, that the success of his stratagem would be, in the slightest degree, endangered, by his letting me know that "all the ice-houses about town" had been swept clean ; that the ponds were so obstinate that they would not freeze ; and that Mr. Tudor had monopolized "all there is," even in "*distant*" ice-houses.

We now have the whole. Is there anything in it, to convey the idea, that the forthcoming supply of ice, when it should have reached Havana, was not to be applied to the purpose of replenishing the exhausted stock of the Havana ice-house, and saving my property from the consequences of a failure? I think not. Admitting, however, that this is the case, in what position will Mr. Tudor then stand? In that of availing himself of my peculiar position regarding the mortgage, for the purpose of doing me injury, or of extorting from me a surrender of my rights. Rights which had been solemnly adjudged to me by three distinct tribunals: first, by the Court of Mediation, acting altogether upon principles of right, and justice, and equity, untrammelled by the rules and technicalities of law; next, by the Commercial Court, consisting of eminent merchants; and last, by the highest Court of Law.

This is the position in which Mr. Tudor would stand, even admitting that the letter now before us, when fairly interpreted, with reference to my inquiry and to the circumstances in which we, at the moment, stood, did *not* warrant the expectation, on my part, that the forthcoming supply of ice was to be applied to the purpose for which I so anxiously desired its arrival; and this, without any attempt on the part of Mr. Tudor, to take advantage of my position.

To my mind, however, it is perfectly clear, that it *did* warrant such expectation on my part; and that, fairly interpreted, it admits not of being understood in any other way. The only parts of the letter which can be viewed as giving rise to even so much as a doubt on this point, are, the *third paragraph*, (wherein he says, "It appears, therefore, I have no remedy but to build a new house and to hold you liable, which I do, for all costs and damages, and expenses of all kinds, which your extraordinary conduct towards me and the business causes,") and the *concluding portion of the postscript*, wherein he mentions his intention to send out "materials for a temporary ice-house," in the same vessel with the ice.

But could this intention to build the "new house," mentioned in the first of these passages, or even the "temporary ice-house," mentioned in the second, be considered as having reference to *this particular supply of ice*? Could it be understood as amounting to a notification that this *particular supply* was not to be forthwith applied to the purpose for which I so anxiously desired its arrival; but was to be applied to the purpose of extorting from me a surrender of the ice-house? It could *not* be so understood. In the first place, besides the express *answer* to my *inquiry*, with which the letter opens, it contains passages imply-

ing that no other design was entertained by Mr. Tudor, with regard to this particular "small supply," except that of sending it to *me*; and that his "*temporary ice-house*," even, was contemplated only with reference to the next shipments, *after this "small supply."* In describing the "something in the very position" wherein I had been placed by the decision of the Supreme Court, "which shows the absurdity" of that decision, he enumerates, among other consequences with which it was attended, that "*I am to ship you ice; and you are to pocket the money; or do what you please with it.*" Again, in the closing part of the postscript, directly after telling me, "I propose shipping, immediately, a small supply," &c., he expresses great anxiety in regard to the *penalty*, by saying, "meantime, if the ice is likely to fail, protest ought to be made against the anomalous winter, which prevents new ice from forming." But, even if his letter had contained no passages of this sort, the *facts of the case* presented a *conclusive* reason for believing, that this intention to build another house *could* not have reference to the forthcoming "small supply." The emergency was of the most pressing kind; and it was doubtful whether this supply could even *arrive* in time. Had Mr. Tudor already secured a site for his temporary house, even in this case, it would have been impossible to erect it in time. But he had no such site; and, with his and my experience of the difficulty of this point alone, to say nothing of others, the idea was utterly preposterous, that he could, for an instant, have thought of the "*temporary house*," with reference to the supply needed for saving the penalty. At the end of the month of January, the stock, despite all possible exertions on my part to economize, and to prevent it from melting away, had become reduced to *one and a half cords*! On the 4th of February, my painful suspense was put an end to, by the arrival of the brig *Criterion*, from Boston, bringing ice. She also brought me several letters; one from Col. Hobbs, enclosing one addressed to him by Mr. Tudor; and another from Mr. Tudor to myself. The last will be noticed hereafter. The two former are as follows:

Jan. 7, 1837. "Friend Damon: Enclosed you have a letter, which Mr. Tudor sent to me. I have thought proper to place you in possession of it, that you may be informed of his views and feelings towards you, on the subject of a difference which has deprived you both of any income from the property, for two years past. I hope you will be able to come to some arrangement with Mr. Tudor's agent; that, in the present agitated state of the Government, you may be able to make something more out of your Privilege. Yours truly, P. HOBBS."

Jan. 5, 1837. "Dear Sir: The Brig *Criterion* is loaded with ice for Havana, and will sail to-morrow or next day.

"I shall send out an agent to endeavor to make some outlines of settlement with Mr. Damon, but without much expectation of doing so.

"If Mr. Damon shall continue his course of plowing with the heifer, I do not see how there can be any remedy for the difficulties between us. I am told he has a feeling of bitterness and personal hatred towards me. Under such circumstances, I see no chance of adjustment; but, that I shall have to be indebted to him for the destruction of my business in Havana.

"How he can make up his mind to treat *me* in this way, I can only account by believing he is blinded by hatred and dislike.

"I once thought I could depend on Mr. Damon, in all cases, and acted towards him as I would towards a brother. If he can show I have acted otherwise, in main things and important questions, affecting his interest, I am totally blind as to my proceeding with him.

"At a time when I choose to exercise the control in my business, and to determine matters, as specially agreed for on the subject of the ice-house keeper, he undertakes to get put in possession of my estate and to defy me. To this I am to submit; or he threatens all sorts of things. — His lawyer gives out, he shall object to the renewal of the contract with the Government, &c. &c.

"Now, although I may not expect of Mr. Damon a return to me of the liberal dealing by which I have made him from a poor man, into a rich one; still, I think I have a right to expect that he shall not use all his powers, to do me an injury of a high character.

"I mention to you a few of my views in general, on the subject, in hopes you may advise him to come here, with the endeavor of terminating our difficulties.

"As to making him any concessions because 'he has been put in possession' of my property in Havana, against all our agreements; in violation of all propriety and against my will; I shall not do it.

"If he chooses to continue his desperate course, I shall wait until he has done a great deal more than he has yet effected, before I shall consent to be driven from the position I have taken.

"Any letters you may have for Havana, if you will send them to my office, they will be forwarded in the *Criterion*.

"I am your obedt. servt.

"FREDERIC TUDOR."

It is here seen, that Mr. Tudor's diplomacy is maintained to the last; my friend and agent at Boston, — who might otherwise have taken steps, even at this late hour, for despatching ice to me, — is informed that "the Brig Criterion is loaded with ice for Havana, and will sail to-morrow or next day;" and also, that Mr. Tudor will "send out an agent to endeavor to make some outlines of a settlement with Mr. Damon." But is my friend informed of the purpose to which this "ice *for Havana*" is to be applied? Is he told, that, — through Mr. Frederic Tudor's exceeding delicacy, and his extreme solicitude for the peculiar position of Mr. Damon respecting the mortgage, — this ice is to be used for the purpose of extorting a surrender of the ice-house? Is it intimated that this is the first of the "outlines of a settlement?"

Before we proceed further, let us recur for a moment to Mr. Tudor's letter of December, 21, 1836. — We have seen, that this letter did *not* convey any intimation that *any* conditions were to be attached to the landing of the forthcoming supply of ice, and its application to the purpose of protecting me from the consequences of the penalty. But suppose, that the plain meaning of the letter had been the reverse of what it is in this respect; and that it had explicitly informed me, that the delivery of *this* ice into the Havana ice-house, was what the writer had reference to when he spoke of "materials for a temporary ice-house, not knowing the course you may determine upon." Suppose, that, — instead of leaving me to understand that it was the building of a new house for *future* operations, which was to depend upon the course I might determine upon, — he had expressly said, that the delivery of this particular supply of ice should be made to depend upon my course. Make this supposition, and the question arises: what does Mr. Tudor mean by "*the course* you may determine upon?" My course, in reference to *what*? Why, my course in reference to the offer just made by Mr. Tudor in this very letter. My course, in accepting or declining that offer. And what is that offer? "I have now to conclude with offering you what I offered in Boston, upon which terms, I will bury the hatchet." Farther on, he proposes that, in order to come to a full and perfect understanding and reconciliation, I should "come home, putting in your place *any one you may prefer*." This, then, was what he must have had reference to in speaking of my *course*. If I should accept this offer, then he would forthwith "bury the hatchet;" all idea of further hostility or contention would be given up by him; and the materials intended for the new house, should be applied to the repair and improvement of the existing one.

Admitting, therefore, — what I altogether deny, — that I was to understand from Mr. Tudor's letter, that any condition whatever was to be attached to the delivery of this supply of ice; the condition could be no other than the one just ascertained, to wit: that I should hold the post of ice-house keeper at the compensation offered me in Boston; and that, in the event of my accepting his invitation to repair thither, I should put in my place, as ice-house keeper, a person of *my own choice*.

Arrival of Bacon. — And now, for the course pursued by Mr. Tudor. The day of the arrival of the *Criterion*, I could obtain no intelligence respecting her cargo, except that she brought *ice*; and that the custom-house officer had understood, from what had passed between the Captain and Supercargo on the subject, that this ice had been sent out, *not for the ice-house*, but "*on speculation*."

This "Supercargo," when he saw fit to disclose his true character, turned out to be Mr. Bacon, the new agent, whom Mr. Tudor had charged with "the outlines of a settlement" with me. His first step was, to take up his quarters in the ice-house with Mr. Davenport; which lodgment being effected, he opened his mission by summoning me forthwith to surrender at discretion and evacuate the premises.

My reply to this summons was, that *if he would pay my compensation for the whole period during which I had been unlawfully deprived of the possession and management of the establishment; pay me my share of the profits which had been pocketed by Mr. Tudor; refund the money which I had paid for my one fifth share; and pay me one fifth of the cost of the building in which we then stood; (which, contrary to agreement, had been built in part at my expense,) I would deliver possession of the property; but on no other terms.* (x)

(x) Even Mr. Tudor, difficult as he is to be "convinced against his will," could not well have failed to be long since convinced, that the course pursued by me could not possibly have been the result of *calculation*; and must have been caused by a rooted conviction of right, and an inflexible determination not to have my rights despotically wrested from me. So far as mere money was in question, all that I had been required to submit to was, the reduction of my compensation from *ten* to *five* per cent. The alternative presented to me had been, the *loss of all*; unless I should be able to establish what I deemed to be my rights, in a legal controversy, which my antagonist would be sure to spin out to the end of time if possible; and neither the cost nor the duration of which, any human being could foretell. In deliberately electing this alternative, therefore, I had deliberately staked *my all*, — whatever I was worth in the world, and the remnant of my life, — against the legal chance of establishing my right to this *five* per cent. This could not possibly have been the result of *calculation*; and Mr. Tudor must have become perfectly aware of it, if, during the past two years, he had been capable of a single lucid interval when thinking of me. And yet, we here see him despatching to me such a missionary as Mr. Bacon, with a cargo of such demands as he was freighted with!

His answer was, that *I should not receive anything*; that I HAD FORFEITED MY INTEREST, and *should never so much as see the accounts for the period during which I had been out of possession.*

His next step was to inform me, (I quote from a letter written to my friend in Boston, on the 8th of the same month,) "that he has *positive orders* from Mr. Tudor not to have the ice put into this house unless I will let him appoint a man to sell it."

Such was Mr. Tudor's mode of sending, "immediately, a small supply," to save my mortgaged property! I "offered to pay the freight and current expenses of this cargo, and then remit Mr. Tudor's portion to him; more than this, I cannot do without giving up my rights." So I wrote to my friend; and those rights, I was determined not to surrender, cost what it might. I supposed that a proposal so equitable, as this would have been, under any circumstances, and so *liberal*, considering those in which we stood,—could scarcely fail to be accepted, if the new minister plenipotentiary should have any discretionary powers behind his "positive orders." At first, however, it seemed that he really was not clothed with *any* discretion; for, some days after my proposal had been made, I wrote, "I had thought they might relent, and we come to terms; but Bacon says that *nothing* short of its being sold by a person over whom I have no control, until Mr. Tudor shall be made acquainted with it, will induce him to put it in here. If he does not put it in here, he is to build a new house, and hold me responsible for damages, &c."

After all, however, it turned out that there were some "secret instructions" behind the "positive orders;" for, finding me inflexible, Mr. Bacon at length gave way; and, by so doing, gave proof that his "positive orders" went no further than to require him to *pretend*, to be positively instructed not to allow any use to be made of the ice, unless I should surrender all that the sentence resulting from our two years' struggle had awarded me. In regard to those "materials for a temporary house," which, agreeably to Mr. Tudor's letter, were to accompany the ice, his diplomacy proved no less hollow. Whilst Mr. Bacon was attempting to intimidate me into a surrender, he asserted that he had brought the materials for a new house. But I heard nothing of them afterwards; nor,—so far as I could learn,—did any such come, either then or subsequently. Unless, indeed, the "temporary house" was to be built after some newly-invented plan, and to consist altogether of *shavings*, of which material an abundant collection accompanied the "small supply of ice" brought by the Criterion. Under date February 11th, 1837, I wrote to my friend:

"We have this day come to terms, so that the ice is to be landed in this house, and I am to be the seller of it. Bacon has the privilege of appointing a man to stay in the house and *see* as much as he likes of the sales, but has no hand or voice in making them; he is to receive Tudor's part of the money every Saturday, and remit it or do what he likes with it. It is also agreed that we immediately come to an arrangement, appointing arbitrators to settle the differences between Mr. Tudor and myself. This will probably lead to a dissolution, but first to an adjustment and settlement of accounts.

"If this cannot be done before more ice is wanted, I suppose Mr. Tudor will send it; if he does not, we shall be in the same predicament we have been in for some days past; only we may not have a cargo in the harbor. If it should be the case that he refuse to send ice *for the house*, I wish you would send it without delay."

PROVISIONAL AGREEMENT WITH BACON. The agreement above referred to, was a written one, which will be found in the Appendix, (C.) After stipulating, as is above stated, in regard to other points, it runs thus: "I, Marcus D. Bacon, am to receive the four fifths of the proceeds which appertain to said Tudor, in order to remit them to him; said payment to be made every Saturday, and the accounts to be open to me for examination whenever I see fit. This agreement to be deemed a purely provisional one; and it being understood, that it is not to affect, in any way, the sentence of the Audiencia, or anything determined thereby."

From this result of Mr. Tudor's stratagem, it will be perceived that the advantage gained by him, by availing himself of the peculiarity of my position as *his* surety, although it fell far short of that which he had promised himself, was still considerable. During the two years that I had been kept out of possession, he had been quietly pocketing my money, whilst I was losing all my time in dancing attendance upon courts, and incurring great expense and trouble, besides being subjected to every petty legal and illegal annoyance, and personal vexation, which his representative's ingenuity could contrive. But now, that the possession had been restored to me, and Mr. Tudor's course had been finally adjudged to have been utterly illegal, by the highest court of appeal,—just as it had been by the first tribunal before which the case had been brought,—now, when it had been judicially decided, that the money so pocketed by Mr. Tudor had been taken from me contrary to both equity and law; now, when I had been restored to the position which would enable me rightfully to retain, from the present income of the establishment, the

money which I ought to have been receiving, in peace and quiet, for two years past ; I was precluded from exercising this right, by the concession extorted from me *with the knife at my throat*. The expression is a strong one ; but it has suggested itself, and I will hazard it ; leaving to the reader to judge whether its metaphorical use is not *fully* justified by the nature of the course pursued towards me. Pointing to the *circumstances* under which that course was planned and adopted, I will leave it to him to say, also, whether the picture might not with strictest justice be made stronger still ; and whether my case, at this juncture, might not be likened to that of one who has the knife at his throat, at the dead hour of the night, from the hand of a man whom he has taken under his roof to save him from the icy tempest.

Although thus extorted, the agreement, once entered into, was my act ; and the thought of swerving from it never crossed my mind. In fulfilment of the obligation contracted by me, the accounts were adjusted and stated every Saturday evening, and tender made to Mr. Bacon of the four fifths of the proceeds which appertain to said Tudor." With the money, I tendered him a receipt. This he refused to sign, objecting to its form, and proposing one whereby the money would appear to have been received by him, for Mr. Tudor, only *on account*, without entering into particulars. As this receipt was made the ground of legal contention, and also the pretext for the calumny, that I had availed myself of this device to retain the money in violation of our agreement, I will here give it at length :

"As attorney of Mr. Frederic Tudor, under a general power from him, I have received of Mr. John W. Damon, manager of the ice-house of this city, the sum of —, which appertains to my constituent as his four fifths of the proceeds of sales from the — day of — to the present date, both inclusive ; which payment he makes to me according to the agreement entered into on the 11th day of February, of the present year, now in our hands respectively."

This is the receipt, word for word. The reader can now judge whether its terms are not in perfect and literal accordance with the agreement referred to ; or whether, at the time of presenting it, I could anticipate a refusal to receive the money, grounded upon objections to its tenor. Two objections only were specified ; and these were both of so perfectly frivolous a character as to afford just ground for suspecting that some *trap*, some further piece of *diplomacy*, lay at the bottom of Mr. B.'s desire to substitute a less definite form of receipt. One of the two obnoxious features, pointed out by him, consisted in my being styled "manager of the ice-house." But was I not so, *in*

fact? And had I not been adjudged to be rightfully so, *in law*, by that sentence which had been referred to in our agreement, for the express purpose of stipulating that its force should not be in any way affected thereby? And, supposing the use of this designation not to be warranted by the tenor of our agreement; what effect could possibly result from its application to me, when connected,—as it here is,—with an express reference to that agreement, as the thing whereby the true meaning and force of the entire receipt were to be determined? The other objection,—upon which most stress was laid,—was, that it recognized me as *part owner* of the establishment; which, Bacon said, he denied me to be. But the receipt contains no mention of such ownership; and if this was to be considered as implied in the words, “which appertains to my constituent as his four fifths of the proceeds of sales,” then, our written agreement, which had been signed by Bacon, contained the same implication; these words having been copied therefrom.

If ever a writing of any kind was drawn up in *perfect* good faith, this was the case here. And yet, it was made the pretext for adding a new calumny to the old, saddened mass, which required something fresh by way of leaven to its staleness, and for new litigation from the peace-loving gentleman who had just written to reproach me with “harassing with law suits,” one who had always “acted towards me as a brother.” It is true, that his letter was an incoherent rhapsody of threats as well as peace, a salmagundi of daggers and olive twigs; but, one part of it did reproach me with law-suit harassment. And yet, the ink of this missive has barely had time to dry, when his new agent, armed with a “General Power of Attorney,” and acting under “positive orders,” makes my receipt the pretext for summoning me before the *Consulado*, on the charge of ill-faith in the breach of my engagement to pay him the money!

The turn which this new case took was, a submission of the matter to arbitration. The referees were, on the part of Mr. Bacon, Mr. John Morland, of the house of Luis Martinez & Co., and on my part, Don Alejandro Morales, the head of the house of Alejandro Morales & Co., particularly well known abroad through its foreign partners, Mr. Francis Horn, of Hamburg, and Mr. Tolmé, the British Consul. Mr. Morland proposed that they should decide that I must pay the money forthwith, and then institute suit. This extraordinary proposal, to compel me to pay money and leave me to institute suit to compel the payee to give me a receipt, was viewed in its proper light by the other arbitrator. Finding they could not agree, they appointed (y) Don

(y) Since the above was written, I have been reminded that the appointment

Joaquin Gomez as umpire. He decided in favor of the form of receipt proposed by me, (which by the way, had been approved by Tudor's own lawyer.) But, notwithstanding this decision, to which he had solemnly bound himself to conform, Bacon persisted in refusing to sign; and this position was maintained by him until his death, from yellow fever, in the month of July following: the money having been punctually tendered to him every Saturday, until he became ill, and I deemed it proper not to annoy him.

DIFFERENCES REFERRED TO ARBITRATION. Agreeably to the stipulation to that effect, in our provisional agreement, Mr. Bacon, after divers delays on his part, agreed to the terms of an Arbitration Covenant, which was executed by us in Court, on the 11th of April, 1837. With a saving on my part, of the sentence of the Audiencia, adjudging me the possession of the property and its management; and with a *protest* on the part of Bacon, that I was not to be considered in the light of Mr. Tudor's *partner*, inasmuch as the bill of sale of January 29, 1824, did not establish that relation between us; (z) the Arbitrators were em-

was made by the Court; the arbitrators not having been able to agree upon this point neither. Delay, contention and confusion were still the word.

(z) To comprehend the *virtue* of this pertinacious denial of a *fact*, which was not only clear and undeniable in itself, but had been, over and over again, *expressly* admitted in Mr. Tudor's letters, &c., it is necessary to advert to the bearing it has upon the sentence of the Supreme Court. Although it had been clearly and positively agreed, between Bacon and myself, that this sentence should remain undisturbed; and although this, — being made by me a *sine qua non*, — constituted the very basis of every other part of our agreement; yet, the attempts were incessant, on the part of Mr. Tudor's representatives, to get round it, "by hook or by crook," and virtually to set it aside.

We here see a specimen of them. Although the sentence is saved by me in this arbitration accord, (as it has previously been in the provisional agreement, without any qualification from B.) yet here he contrives to slip in (among his reasons for entering into the accord) a denial, that the *bill of sale*, — which was to go with the other documents before the arbitrators, — had established the relation of partner between Mr. Tudor and myself.

And what was this *motive* for this pertinacious ill faith? Why, the object in view was, that the arbitrators might, if possible, be perplexed by a *quibble* which had nothing to do with the substantial merits of the case, and the ground for which, was afforded by a mere question of *form*. Once admit that I was a partner, and there was an end to the matter; not even so much was left as "a loop to hang a doubt upon;" for the law was express, that I could not, — in any way, nor upon any ground whatever, — be deprived of the management, except by a rescission of the partnership, effected in the mode which it prescribed. The only chance, then, was, by denying that I was a partner; and this denial was made to rest upon the *form* given by Mr. Tudor to the document written by him for the purpose of establishing the partnership between us. It was contended, that this did not correspond with those prescribed by law, and that certain *formalities* had been omitted.

And thus did Mr. Tudor attempt to punish, for said Mr. Tudor's own benefit, the "poor miserable carpenter" of Boston, for the confidence reposed by him in said Mr. Tudor! Thus did this educated gentleman attempt to avail himself of

powered to settle every point of difference between us, to the extent even of determining whether the connection between Mr. Tudor and myself should cease, and upon what terms. Mr. Bacon named as his Arbitrator and Alternate, Don Francis Goyri, and Don Juan de Alles; and I named Don Alejandro Morales and Don Joaquin de la Puente. In case of difference, they were to appoint an umpire; (and if they could not agree upon one, he was to be appointed by the Court.) They were allowed, from the time when the documents should be laid before them, the term of sixty days to come to a decision; and the umpire, the term of twenty days.

My hope of a prompt settlement, and the manner in which my just expectation, in this respect, was disappointed, are sufficiently explained by a few extracts from my letters of that period.

It has already been seen, that on the 11th of February, the very day on which our Provisional Agreement was entered into, I had written to my Boston correspondent: "It is also agreed, that we immediately come to an arrangement, appointing arbitrators to settle the differences between Mr. Tudor and myself. This will probably lead to a dissolution, but first to an adjustment and settlement of accounts. If this cannot be done *before more ice* is wanted, I suppose Mr. Tudor will send it," &c.

From this, it is seen, that I then flattered myself with the prospect of a *very early* termination of the whole subject. Mr. Bacon, however, proved less expeditious than I had hoped, and *two months* passed over, before he could be brought to agree upon the terms of the reference. This preliminary being finally settled on the 11th of April, another month passed over, when, on the 10th of May, the Arbitrator and Alternate named by Bacon, made known their refusal to act. He then named Mr. John Morland, who accepted.

On the 21st of May, the letter which I regularly wrote to Mr. Tudor every ten days, transmitting a copy of the Journal, and giving him all details respecting the establishment, closed as follows:

"Bacon says *our affairs will soon be settled*, when I shall have nothing more to do with the business; therefore I will not trouble you any more with complaints [respecting the conduct of his two representatives, Davenport and Bacon, in annoying me in every way they could think of, even to the extent of presenting every possible hinderance to the progress of the ordinary and

his own act; in having, — through ignorance or design, — omitted certain *formalities* prescribed by Spanish law, to persons who wish to establish *partnerships*!

For letters of Mr. Tudor, wherein he had, *in terms*, recognized me as his "partner," See Appendix (E.)

daily operations of the establishment] either for repairs of the house or my own convenience. I have put up with them for two years past. I will bear with them a week or two longer."

In my letter to Mr. Tudor, of July 1, I say :

"I wrote you in May, that I should make no more complaints against Bacon, because he said our affairs would soon be settled. How soon they will be settled, I will not venture to predict; but in the manner they are going on, I should think not immediately; for since the arbitrators have been named, a great deal of time has been spent; and now, that Bacon has got his third arbitrator, (Morland) he is putting in *escritos* asking for conferences, when I expected the arbitrators would have proceeded to business at once. That is not the case. It is current throughout the city, that when Bacon gets through with this settlement, he is to throw open the ice-trade to any one who may incline to take hold of it. How far this giving out of such intentions may be to your interest, I shall not pretend to conjecture."

My letter of July 11th closes with :

"Of the arbitration, I presume you are fully informed by Mr. Bacon; for myself, I cannot see as it has progressed any since my last."

BACON'S LAST PROPOSAL. In a letter to my Boston friend, under date July 12, after giving him an account of some of Bacon's doings, I say,

"Previous to this start for the money, Bacon told me he would settle our dispute in a peaceable manner, provided I would consent to pay, as an indemnity for expenses, &c. &c., made by Tudor, the sum of six thousand dollars, and give up all pretension to any right in the profits of the house, from the time I left here to go to the north, (October, 1834) until I took possession, in November last, (1836). He would then consent that the business should go on as it was going on before any difficulties happened between us. This proposition I rejected at once."

This proposal, be it noted, comes some months after the execution of a solemn and conclusive accord and covenant, in open court, submitting all differences to arbitrators, fully empowered to effect a complete, perfect and final settlement between Mr. Tudor and myself. They were limited to the term of sixty days after the documents should be presented to them; but, instead of allowing these documents to be laid before them, so that they might proceed to business, Mr. Bacon was constantly finding some pretext for dilatory proceedings. And meanwhile, I am entertained with *propositions*, of which the above is a sample, to dispense with the arbitration.

Note, too, what this proposal amounts to; I am to be restor-

ed (a) to the position which I had ever maintained to be my rightful one, provided I would pay Mr. Tudor \$6000, and release him from the obligation to account for that money of mine which he had been pocketing for two years! Had I been in the mood to put myself to the trouble, I might perhaps have found out, that in this instance also, Mr. Bacon had in reserve some "secret instructions," to the effect, that Mr. Tudor would be generous enough to waive the \$6000 demand and content himself with the second branch of this *proviso*.

This was about the last of Mr. B.'s communications to me; for he died of the black vomit on the 26th July, 1837, leaving the arbitration in the state of abeyance in which it had been kept since the 11th of February, when we had mutually engaged to settle all differences in this way.

MR. TUDOR'S DETERMINATION TO RENEW LITIGATION. It has been stated, that, besides the letter from Col. Hobbs, enclosing one to him from Mr. Tudor, the Criterion brought me a letter from Mr. Tudor directly. It is as follows: (b)

Jan. 11, 1837. "Mr. John W. Damon: Since my last, I have received your favor of the 17th ulto., which affords me some relief in regard to the danger of a failure of the supply before the Criterion can get out there.

"I think the tone and spirit of your letter are better,—my hope is, that you may at length become reasonable. I do not wish for any advantages over you, nor for anything beyond a liberal justice, which the offer I made you held out.

"For your acts in Havana, I do not feel inexorable; you only have to pay all the damage, and that will be all settled. The fifth interest, you have lost, by denying the conditions of the bill of sale. I will restore it when you return to gratitude and to the complete fulfilment of the conditions.

"You ask me if Mr. Davenport is authorized to begin new law suits. *He is expressly instructed to do so.* Mr. Bacon comes on the same errand; and with *ample powers to attack you*, in all possible just and lawful ways, until he shall have obtained for me possession, entire possession, of my property.

(a) Or rather, *having been* restored to it by the Juridical power of the State, I am to be left in peace and to enjoy an exemption from further harassment, provided I will purchase it on these terms, and thus pay Mr. Tudor \$15,000 or \$20,000, for his condescension in acquiescing in the final decision of the highest tribunal of the country! I say the *final* decision, because he had allowed the time to expire, during which he might have taken an appeal to Madrid.

(b) Mr. Tudor's letters to me were generally sent in duplicate, and sometimes in triplicate. Of this one, however, but a single copy came; and as that copy has become attached to some of the records, I am under the necessity here, of giving, instead of the original English, a re-translation from a Spanish version of it, where of I happen to have a copy.

"Lawsuits have no end, with those who have courage and a fixed determination to carry them on. Your suits, thus far, have been with Mr. Davenport; and now they have begun with me. I have no remedy, but to demand justice, and to go on demanding until I obtain it.

"Meanwhile, I have but little doubt but a company will be formed, of people of this place, to engage in the business when the Privilege expires; *which will ruin all.*" (c)

This, be it borne in mind, is the letter *accompanying the "small supply of ice," and accompanying Mr. Bacon and his "positive orders."* Let the tenor of this letter, and the terms which Mr. B. was charged to offer, be compared with the tenor of Mr. Tudor's last preceding letter, of the 21st December, and the proposal therein contained. Put upon this proposal, the construction least favorable to me, (a construction which has been shown to be inadmissible) and yet see the difference! And had anything intervened, to account for this change? Just the reverse; the only occurrence mentioned by Mr. Tudor is, the receipt of my letter of December 17th, of which he here says, "I think the tone and spirit of your letter are better, — my hope is, that you may at length become reasonable."

But this letter of mine contained, perhaps, some indications of contrition for the misconduct which he acknowledges his gracious disposition to pardon? The reader shall judge for himself. With the exception of some long details respecting the measurement of the stock of ice then on hand, concluding with "consequently, with the same waste and consumption, we have ice for near forty days more," the entire letter is as follows:

Dec. 17. "I met Mr. K—— in the street yesterday, and he told me (whether in jest or not, I cannot say) there was a company forming to set up an opposition in the ice business. If this be true, a failure of supply would be much against the present establishment and greatly in favor of the opposition.

"I wish very much to know from you whether Davenport is now acting advisedly or discretionally; for he appears determined to continue the suit, or rather to prolong the contention,

(c) "*Ruin all!*" Most consistent of all consistent gentlemen!! Ruin all, will it? And by whom is this opinion expressed,—or rather, *betrayed*, in the earnestness and warmth of the moment? Why, by Mr. Frederic Tudor; the same gentleman who, at sundry times both before and after, on every occasion that offered, affected to attach little or no value to the Privilege; the very identical gentleman whose special envoy, Mr. Bacon, a day or two after the receipt of this letter, (between the 4th and the 8th of February,) whilst endeavoring to fulfil his "positive orders" to *terrify* me, informed me that Mr. Tudor had it in contemplation to surrender our Privilege and have it declared null, so that the trade should be thrown open; and also proposed either to buy my share "in the present *house*," or to sell me Mr. Tudor's share, but, in either case, "on condition that the trade be made free!" Profound diplomats!!

although it has been decided by the Superior Court of the island. Since I have had charge of the house, he *has made two attempts on the money-drawer*, in order to take possession of it; and I was obliged to resist him with considerable spirit or he would have taken it. He has tried to avail himself of the funds of the house with all his might, and has even *made out an account and collected money* (from the *Lonja*) *for ice sold by me since I have had charge of the house*. The cigar-business is still carried on in the ice-house, to the great detriment of the ice-business, although I have protested to him against it. This cigar-business has caused several disputes between us; for it occupies room wanted for the conducting of the ice-business; and his cigar folks keep the doors open for their own pleasure, to look at vessels going in and out of the harbor, when I have the hatches open, hoisting ice.

"Some days since, Davenport made application to the *Consulado* to call a conference; and to-day we met, in which D.'s lawyer stated many things, but nothing was done definitively. Davenport, however, stated that the shavings (*d*) which I have been procuring and have put on the ice were altogether useless, and if anything an injury, as the hatches had to be open to put them into the vault. You will recollect that the hatches are double; the upper one is large and heavy to handle, the lower one is in pieces and easy to put off and on, and was actually put off and on at the reception of each and every basket of shavings.

"Davenport will not, as yet, let me see his account of sales and disbursements for these two years past. *It is a fact that he has not paid for the services of a negro from the 1st of April to the 10th of October, 1835, at the rate of \$20 per month. I have reason to think that this negro's service was charged to the house at the time.* (*dd*) I also have reason to think that if I had his account,

(*d*) See note (*oo*.)

(*dd*) This incident afforded in the sequel a very perfect specimen of Mr. Tudor's notions of *justice*, in matters of business between man and man. The request here made by me, in regard to Davenport's account of disbursements, for the period during which my money had been pocketed by Mr. Tudor, was repeated several times; but this gentleman saw fit not to bestow the slightest notice upon it. We have seen that his "fixed determination," at this period, was, that I should "*never* so much as see D.'s accounts," and it was not until nine months afterwards, that the determination became loosened, and the weather-cock veered about as was required by the way the wind then set.

Meanwhile, a final adjustment and settlement of accounts had taken place between them; wherein D.'s charge for the wages which I had given notice to Tudor that D. had not paid, was admitted.

The negro for whose services these wages were due, was a servant of mine, who had been trained by me to the business of the ice-house, which he understood as well as any one could, and who had been hired by me to Davenport, to assist in the ice-business. He had been hired to D. *as the ice-house keeper* for the time being;

I could find many small things he has charged to the house, but never paid."

or in other words, to *the ice-house*, and not to D. personally. The debt for his wages was a debt from *the ice-house*; and its being due to *me* was no reason why it should not be paid as well as any other debt of the establishment which was left to be paid by me. It *was* paid; and, besides charging it in my account rendered to Mr. Tudor, I expressly advised him of the fact, that it had not been paid by D.

Well, ten months elapse after I had notified this fact to him, and had requested to be enabled to ascertain from Mr. D.'s account of disbursements, what payments he had charged as having been made for the ice-house; and at the end of this interval, on the 4th November, 1837, Mr. Tudor writes me the following letter:

"In your account rendered at the close of the year 1836, you make a charge as follows: 'to cash paid Davenport's assistant from the 1st April, to the 10th October, 1835, at \$20 per month, \$126, 5 1-2.' — In Mr. Davenport's accounts, rendered during the time for which you make this charge, the pay of assistant at the ice-house is regularly included; and he states to me that all accounts between you and him are finally closed. As the accounts now stand I have paid it twice. Will you give me such explanation and evidence, as shall enable me to demand the amount from Mr. D., which I certainly shall do, if he did not pay his assistant as charged in his accounts?"

"Very possibly it may be an error in your account; and it should be observed, the charge ought to be against *him* and not against *the ice-house*; as at the time, *he* had direct cognizance of such matters, and not I. If Davenport is in error, I think it should be *your* loss, and not mine; you leased the assistant to him and looked to him for pay."

Behold! then, Frederic Tudor, Esquire: painted by himself, "as large as life and twice as natural." "It should be *your* loss and not mine!" And the reason too: "*he*, (my representative, Mr. Davenport) and not I, had direct cognizance of such matters!" "You looked to *him* for pay!" And so I had, — looked to *him*, as Mr. F. Tudor's representative, — but he would not pay me; the game, at that time of day, having been, to *starve me out*; and Mr. D. having been nothing loth to play his hand in it to the best of his ability. And so, he *would not pay*, and left me the choice either to wait "until the ides of March," (as they both flattered themselves) or bring suit against the ice-house for \$126 66 $\frac{2}{3}$ -100.

Such is Mr. Tudor's own impress of his own self! And note, too, how perfect an impression it is, even to the minutest details; for *self*, — his *real own* self, — is to be seen everywhere. He says, "I have paid it twice." Now, *who*, in truth, had paid it twice? Was it "I?" Was it Mr. Tudor alone? No: it was *the ice-house*. So that, at best for Mr. Damon, *he* was the loser of one fifth of the sum. The allowance of this charge, on the settlement of Mr. Davenport's accounts, had been just so much money of Damon's thrown away; *lost*, through Mr. Tudor's imperial "fixed determination" to treat with contempt everything coming from Damon. And yet, according to the dictates of Mr. Tudor's special "silent monitor within," Damon ought not to content himself with this loss of a fifth of the amount, already thrown upon him by the act of Mr. Tudor; but he ought, in addition to the fifth, to lose the *whole* sum, by waiving his claim for it upon the ice-house, which had received the service; and this, for the plain reason, that "at the time" it had not been Mr. Tudor in person, but Mr. Tudor by his attorney and representative, (employed by him wrongfully and unlawfully to keep J. W. Damon out of possession of the establishment,) who had "direct cognizance of such matters!"

It may be observed, that Mr. Davenport told the truth when he informed Mr. Tudor, "that all accounts between you (Mr. Damon) and *him* (Mr. Davenport, *personally*) are finally closed." Besides the ice-house assistant, above mentioned, Mr. Davenport had hired of me, on his individual account, a clerk and three workmen, whom he employed in his cigar-factory. True to the policy of the time, — which was to deprive me, as far as possible, of all resources for carrying on my suit against Mr. Tudor, — Mr. D., when these wages had run up to the sum of \$323, *refused payment*. I was, at the time, not only harassed, but straitened, and even more averse than usual to engage in another law suit; and I took every possible step to avoid the necessity. But it was only a waste of time; and the suit had to be brought

To the duplicate of this letter, was added the following Post-script :

"I wrote you, in my letter of the 29th ulto., that the despatch-tub was broken or rotten, so that the water run out on the floor, &c. ; and that the hoisting-tubs wanted repairing. I have asked Davenport to move his cigars, so that I might have room for a bench to work upon to make these necessary repairs, and he refused. Our dispute became so warm,—and he called to his assistance his clerks and an old man by the name of Atkins, (who lives with Davenport,)—that it was necessary to call upon the *Comisario* to quiet the dispute. But the cause still exists: that is, I am not able to set up the bench, nor to make the repairs, unless I do it by main force, in which case something serious may happen; and this, I believe, is what Davenport has been seeking for some time, so that he may commence a criminal action. In the dispute above mentioned, one of Davenport's clerks dared me to strike him; for, said he, I will then prosecute for assault and battery. This was a declaration on their part, of that which I have suspected them of for some time past."

This is the entire letter, from which the reader will see, that Mr. Tudor was no less fitful and gratuitous in his praises than in other things. From his commendation of its "better tone and spirit," and the hope which it had inspired, that I would "at length become reasonable," any reader of his reply would take for granted that I had made some important concession. Instead of this, my letter does not contain a single word upon the difficulties between us, and is limited to giving a specimen of the conduct of his representative, and of the way in which he was abusing the permission to reside in the house, and see into my doings, provisionally granted to him by the Court, through delicacy for the interests of Mr. Tudor, and as a security against his being defrauded by me, as he had alleged he feared to be.

Mr. Tudor's letter of January 11th, 1837, was the last he wrote to me until the 8th of July, of the same year. During this interval I continued to write every ten days, (and sometimes between whiles) as I had originally engaged to do, giving him an account of the sales, with every other detail respecting the business and the condition of the establishment. But my letters remained without reply or acknowledgment, or notice of any kind, direct or indirect.

at last. The result is communicated in a letter to a friend, under date April 1, 1837: "To-day I finished my suit with Mr. Davenport, on account of the wages. The amount was \$323 6¼-100. This sum he has now had to pay, less, \$3 62¼-100; together with \$354, the amount expended by me in the suit. His own expenses were about \$518. So that the whole he has had to pay is about \$1200, in lieu of paying an honest debt at first, of \$323.6¼."

In my tri-monthly letter of February 11, parts of which have already been quoted, I reply to the points presented by his two, of December 21, and January 11 :

"In my letter of the 1st inst., I said that I had yours of the 21 December, and would write you upon it in a few days. Almost immediately upon that, the Criterion arrived with yours of the 11 January. Mr. Bacon commenced with demands upon me, which I could not accede to. These, with the care of the house, have prevented me from complying sooner.

"I am sorry you express yourself in the manner you do, in your letter of 21 December; for I do not conceive that I have violated any of my agreements with you; but to the contrary, you seized upon the ice-house, and declared that I had no right nor title to any part of it, and that my presence in it was 'intrusion.' Was such treatment kind or just?"

With reference to his reproach, that my fortune was due to his generosity, and that now I was "willing to attempt to ruin and destroy my [his] business," I content myself with saying:

"When I first left Boston for Martinique, [in his employ,] I stood on the same footing with many of my contemporaries in the carpenter's business; some of whom have become wealthy, some remain poor, and others have gone to their long home. Had I remained in Boston, and practised the same industry and economy that I have in the West Indies, I doubt not but I should have been much better off than at present; at any rate, I should have been near to my aged parents, amidst my early friends, and free from the attacks threatened me in law suits. My diligence is as great, and my inclination as strong to render any service for the benefit of the ice business now, as in 1824; but there are those living in the house who oppose."

With respect to the course of his agents, and the threats of fresh attacks, I say:

"I had thought Davenport was acting discretionally; for at one time I told him," &c., &c., &c.; "and he said, *he was responsible*. But, from your letter of the 11th of January, by Mr. Bacon, I perceive he acted by your order and instructions; and that B. comes in the same manner."—"If Mr. Bacon commences any suit against me in your name, I shall defend myself as well as I can: still having a regard to the interest of the concern, as much as I can consistently with a proper defence."

In regard to the remaining point, I say:

"Mr. Hobbs wrote me by the Criterion, from whom I learn, as well as from Mr. Bacon, that you suppose I hold *personal* enmity and hatred towards you. This is far from being true:

I do not hold personal enmity against any one; I have only contended for my own property, but I have been insulted most grossly by Davenport. I have been called by him all the opprobrious names the English language is capable of furnishing; he has, after I was in bed and asleep, opened the windows of the part of the house where I slept, and left them open all night. I remonstrated against such conduct, but it had no effect; he was very careful to have the part of the house where he slept shut up from the night air.

"Mr. Bacon has taken lodgings in the ice-house, and messes with Davenport; and in fact joins with him to prevent the operations of the house going on as they ought; for, without quarrelling, I cannot do anything towards making the repairs; even the repairs of the hoisting-tubs he will not allow to be done here, as he says it makes a noise and disturbs D., who is somewhat indisposed. I insisted on having the repairs made; and B., one morning whilst I was out, took all the tubs and the materials I had provided, and put them out of the house, and called in a Comisario to prevent my having them brought in again. Thus you see how things go on here, by those who have no regard for the interest of the establishment, and the half has not been told; yet, it appears, they are acting under your particular orders and instructions.

"I cannot think of leaving here while such things are going on."

This being in answer to his invitation to come to Boston, and settle all difficulties. If his agents conducted themselves in such a manner, whilst I was myself on the spot, to maintain the possession which had been restored to me by the officers of the Government, in pursuance of the decision of the highest Court of Appeal,—how would they behave, if I should absent myself from the country? What reason had I for supposing, that they would not seize any opportunity, or avail themselves of any means, that might offer during my absence, or in consequence of any casualty to me, to place me or my heirs in the same predicament I had found myself in on my return from Boston, in March, 1835? Let the reader judge.

In my letter to Mr. Tudor of April 11th, I inform him of the final accord in court, settling the terms of the submission of all our differences to arbitration, and naming the arbitrators; as Bacon and myself had covenanted to do, two months before.

I inform him also, that, in violation of this covenant, Bacon had availed himself of the conference called for the above purpose, to attempt to make, in the name of the grantee, (Tudor,) *a relinquishment of the Privilege*, (now owned by Tudor and my-

self jointly,) and to have the contract with the Government declared null: "Whether by your order or not, I cannot say; but Mr. B. urged very strongly in this conference, to have the contract with the Government, for supplying the city with ice, annulled, and the trade in ice made free."

The pretext for availing themselves of this occasion to make such a move was, that we could not agree upon the terms of a submission to arbitration. The Court, however, would not recognize the right of Mr. Tudor alone to surrender the Privilege, after having sold an interest therein. My consent was required; and that consent, I refused to give. Finding themselves baffled in this, and their stock of definite pretexts for delay in entering into the arbitration accord being exhausted, they made a virtue of necessity, and this point was finally disposed of. Writing on the same day to a friend in Boston, I tell him: "While we were in Court, Bacon urged hard to break up the contract with the Government; to which I would not consent, until we should settle our affairs; and then, I suppose, I shall have nothing to do with it; so they can do as they please."

In my letter of April 21, I say to Mr. Tudor:

"There have been two or three vessels from Boston, within a few days, and one of them brings dates as late as the 3d inst.; but by neither of them have I any letters from you, nor have I anything from you, later than the 11th January. I am ignorant whether you have any ice on the way for me, or when you are to send any; it will certainly be necessary to have some in all next month, (as I have heretofore written to you,) to keep up the supply.

"I wrote you some months since, that repairs were wanting on the house; none of which have been done yet, and every rain we have, deluges the house. The side next the sea, as I have heretofore written you, is open for the rats to go in and out when they will; and the house is so full of them, that they are running across the floor at mid-day, and no doubt the sides of the house, or stuffing, is bored full of their paths. Some repairs ought to be done soon; but, under the present system of things, it is impossible to do anything."

The openings in "the side next the sea," (as I had notified to Mr. Tudor in my account of the condition of the establishment, rendered immediately on resuming possession in the month of November previous,) had been cut by Mr. Davenport. There was no point upon which Mr. Tudor was more solicitous and imperative, than the necessity of keeping the establishment clear of rats; for every rat-hole afforded egress to cold air, to guard

against which, was the primary object (e) in the construction and arrangement of the ice-house. Had he heard of a single rat-hole whilst I was in charge, there would have been no end to the amiable letters from him, such as we have seen enough specimens of. But now, that the house was bored full of them in all directions, I was not even allowed to take measures for arresting the evil! It would have been requisite, first, to institute proceedings, and obtain a judgment for *expelling Mr. Tudor's two representatives* from the premises. No tribunal could have hesitated an instant, to pronounce such conduct as theirs could be proved to have been, daily and habitually, a gross abuse and perversion, on the part of their principal no less than themselves, of that qualification of the decision in my favor which had been *provisionally* made through delicacy for Mr. Tudor. But such a step, besides the trouble attending it, would, had I taken it, have been ascribed to the desire to remove Mr. Tudor's Arguses in order to rob him; and, expecting an early deliverance from the whole set, I continued to bear with them.

A week after, on the 27th April, the Niagara arrived from Boston, with a cargo of ice. Not a line, however, did she bring me from Mr. Tudor; nor was a word said to me on the subject by Mr. Bacon. There was every indication of his being in active communication with his lawyer, until late in the evening of the 29th, when he informed me that a cargo of ice had arrived, which he wished me to receive,—this laconic communication (f).

(e) Of his numerous injunctions on this point, the following will suffice: July 13, 1831. "Recollect, the main point is tightness,—air-tightness, in the walls. Without this, the non-conductor of heat is of small moment. The non-conductor saves at the spigot, and the crack, crevice or air-hole lets out at the bung."

(f) As I wrote, at the time, to my friend in Boston, "no *condition* of any kind was proposed, nor in fact anything said more than for me to take the ice."

Their omission to propose on this occasion, a renewal of our February agreement, (which, so far as regarded the engagement on my part to pay over Mr. Tudor's four fifths, was expressly limited to the cargo then in port,) and the course pursued by Mr. Bacon in regard to the arbitration, afford ground for the inference, that the agreement had, in this respect, proved exceedingly unpalatable to Mr. Tudor; and that he had instructed him not to recur to it. Another motive for avoiding such recurrence was afforded by the implied recognition involved in that document, of my right to the fifth part, the denial of which they had since judged proper to renew and persist in. Such recognition, indeed, was inseparable from *any* agreement respecting Mr. Tudor's "four fifths;" (a truth to which it seemed, that their eyes had been opened only after the difficulty had arisen about the form of receipt,) and they concluded, I suppose, on this ground also, that their safest plan was to deliver the ice without any stipulation, so as to leave Mr. B. free to demand the whole proceeds, as those of merchandize belonging to Mr. Tudor, received by me for sale, subsequently to the February agreement.

They did not advert, perhaps, to the fact, that this expedient had *two* edges, and cut both ways; and that, if it left Mr. Bacon free to demand the whole, it left me free to retain such part of Mr. Tudor's portion as might be requisite to balance our accounts. Such, indeed, was the nature of their position, that it would have required wiser heads than theirs to avoid falling into traps of their own laying, or to pursue in safety any line of conduct, except the *straight forward way*, which they would not adopt.

being the whole fruit of the three days' consultation, during which they had probably come to the conclusion that nothing could be gained, either by commencing anew the February game, or by attempting to play some new one, devised by the fertile genius of my partner; "instructions" for which had, perhaps, accompanied this supply of ice.

The day after this communication, I wrote to my Boston friend, giving him an account of the occurrence, and saying: "This cargo will probably carry us until we shall be able to get through with the arbitration: or at any rate, it will carry us so far, that it may now be considered unnecessary for you to keep a cargo in waiting. It will be best, therefore, to dismiss the ice you have in attendance, on the receipt of this, unless you shall be convinced from Mr. Tudor's conduct in Boston, that he is not going to send any more here."

On the 27th July, I wrote to Mr. Tudor, apprizing him of the decease of Mr. Bacon the day previous. After stating in detail the position in which the matter stood, as it regarded Mr. Tudor's four fifths of the proceeds, under the provisional agreement of February, which (having been presented in Court by Mr. Bacon, and made a judicial record of) precluded me from transmitting them to Mr. Tudor until he should have taken steps to set that document aside,—I conclude by saying: "The amount is rising \$——; which sum, together with any other which may come into my hands, I must hold for your further disposition."

§ 10. — *July to Dec. 1837. — Mr. Tudor's Determination "to Drop Law as he would a Hot Iron." — His Letter of July 8, 1837. — My Replies August 23, 25, and 28, and September 1. — His Letters of September 22, and October 6. — My Reply, October 21. — His Letter of October 12. — My Reply November 11. — His Letter of October 26. — My Reply December 3. — His Letters of Nov. 15 and 18, pressing for further Remittances. — Circumstances under which this Demand is made. — My Reply Dec. 21. — His Letter of Dec. 1. — His New Declaration of War, Dec. 16. — Falsity of the Pretext on which he puts it. — Artifice used by him to give it Plausibility. — Misstatements Respecting his own Letter of Oct. 6. — Suit instituted by him at Boston. — His Letter of Dec. 18. — Peremptory Order to reduce the Price of Ice. — Circumstances under which it is given. — My Reply January 6. — Review of the year 1827.*

MR. TUDOR'S LETTER OF JULY 8. — On the 22d August, 1827, the barque *Miranda*, which had sailed from Boston on the 10th

July, arrived at Havana, bringing me a letter from Mr. Tudor, under date July 8, which, omitting some long details having no relation to the difficulties between us, is as follows :

" Sir : I have never employed (g) Mr. Davenport or Mr. Bacon to engage in broils of a personal nature with you, and my first instructions (h) were, to drop law suits; leaving a bargain made in this country, to be determined by coercive process here, (i) could you no otherwise be made to understand I had rights.

" In May last, (j) in several letters, I gave positive instructions to Mr. Bacon to pursue law no further, and rather to buy peace by a sacrifice of part of my rights than to continue to waste everything in a war. I instructed him to drop law as he would a hot iron. To propose to you to accord to your right to be keeper at ten per cent. while you were actually on duty, (k) and the right to the fifth while you performed the condition. The condition performed has always constituted the right to the fifth. I very distinctly told you, while in my office in Pearl St., upwards of two years ago, I withheld the fifth for violation of the condi-

(g) " Never employed " them for this special purpose ! Note the time when Mr. Tudor first condescends so far as to say even thus much. That his imperial nature should stoop to bestow even this notice upon " personal broils," it was requisite he should have bent his mind to peace ; or, in other words, determined upon what the reader will see merits to be called his " peace-and-amity " stratagem.

(h) His " first instructions ! " Compare this with his proclamation of war, war to the knife, of Jan. 11, despatched in company with the " small supply " of ice ; when the plan of campaign was, to *terrify* me into an instant surrender at discretion.

(i) As an *intimation* of the course subsequently pursued by him, these words, particularly when connected with the rest of this letter and with those that immediately followed, will be seen to amount to nothing at all. But as *evidence*, that that course was, at this very time, meditated, and laid down in his *law* chart, to be pursued or not, according as the wind might set, they will be seen to amount to a good deal.

(j) Comparing this date with that of Mr. Bacon's last proposal, (about the end of June,) it would seem that it had been made in pursuance of the " positive instructions " here mentioned. But Mr. Tudor here says nothing of that indemnity of " six thousand dollars," to defray the cost of the war " &c.," which Mr. B. had demanded of me. Nor is there any mention here of the withdrawal of my claim to my ten per cent. compensation for the period during which I had been unlawfully dispossessed. Had these demands of Mr. Bacon, as the condition upon which I was to be left in undisturbed possession of the management of the business, arisen merely from excess of zeal on his part ? or had they been prescribed to him in some " secret instructions " accompanying those here avowed by Mr. Tudor ?

(k) Note well the precise nature of this proposal. It is, to " accord to " my " right to be keeper at ten per cent. ; " that *right* which he had denied ; and his denial of which, associated with his pretension to require me to reside at Havana, had been the basis of his whole proceeding, and of all the expense and mischief consequent thereon. In my dealings with Mr. Tudor, I too have had to make *concessions* for the sake of peace ; but they have always been concessions of *money*, not of principle. I never offered to " accord to," — I never did " accord to," — any " right " which I had denied. The language here used by Mr. Tudor, he was led to use by the *nature of the subject*. It is appropriate thereto ; and it expresses well the difference between my position and that of the antagonist who has contrived to make people believe that he is a sufferer from ill-faith on my part.

tion by which you held it, and that I was at any time ready to return it to you, when you returned to your duties. You have now apparently done this, and I hope have done so in good faith and with good intentions. (1)

"I now propose a submission of the question between us, not to law, and to arbitration, but to your own good sense; with this view I propose as follows:

"1st. Law to be dropped; each paying his own costs.

"2d. The fifth interest to the termination of the contract with the Government to be admitted on my part.

"To the end of accomplishing this settlement, I herewith enclose the accounts for the two years past. Those for the present year are not made up and cannot be at present and are not necessary. It will, however, be remembered, in addition to the \$2500 agreed to be sent here to cover disbursements, from the first proceeds of sales in Havana, is to be added \$600,—a bill drawn on me, by Mr. Bacon, for freight of the Criterion's cargo.

"My instructions to you now are: after you have paid your-

(2) Here is Mr. Tudor again, in proper person, and true to himself. Here is the child "of a larger growth," riding for the first time in a carriage, and telling us that the trees are moving past him.

"You have *now* apparently done this!" Now!! In what particular did my attitude towards Mr. Tudor, at this moment, differ from, in what particular was it not identically the same with, what it had ever been? Had it not ever, on every occasion, and under all circumstances, been exactly, identically, what it "*now*" was? Was it not *now* exactly, identically, the same that it had been at the beginning of 1834?—When, rather than submit to have my right arbitrarily wrested from me, I had staked my *all* against the *five per cent.*; upon the issue of a lawsuit: an issue which at best is ever a doubtful one; and in which he had flattered himself with the certainty of victory, after he should have spun it out long enough to ruin me in health as well as in purse. Was it not *now* identically the same as in 1835? When,—to say nothing of the attempt, explained in a former note, to avail himself of the defective *form* of his "bill of sale," as an act of *partnership* under Spanish law,—his contract with the Government was produced in court, to prove that it was not transferable; and to deduce from this prohibition of a *transfer*, that his sale of a *fifth interest* to me had been *void* from the beginning,—a double fraud practised by himself, against the Government and against me!

In what particular did my attitude "*now*" differ from what it had been in November, 1836, on being reinstated in my right? Or, in January, 1837?—When, availing himself of that *mortgage-cave* beneath my citadel, he so cunningly charged and so valorously sprung upon me, the mine which he fancied was to blow me sky high, and cast me forth once more, scorched and broken limbed, to flounder among the quicksands of litigation.

In no particular whatever, had my attitude changed. The change was all in Mr. Tudor. His thunder and lightning had proved no better than that of barn-theatricals; his mine had exploded to no other purpose than to strip him bare and to open my eyes and those of others; and his whole stock of stratagems was exhausted. This is the change which had "*now*" taken place; and which, true to his nature, this child "of a larger growth,"—one whom inordinate selfishness and ungovernable passion, combined, would not allow ever to reach the years of discretion,—comes at length to the conclusion to make an avowal of, by saying to me: "You have now apparently returned to your duties; and, I hope, have done so in good faith and with good intentions!"

self as by the enclosed accounts, if correct, will appear your due, to remit me in specie either gold or silver :

"1st. For the disbursements of the present year with the freight of the Criterion, \$3100.

"2d. Then remit my four fifths proceeds sales which may be in your hands at the time you receive this letter.

"3d. To remit as often as once a month the monthly balance due to me. In all cases giving me notice of any intended shipment of specie, that I may insure. All bills are to be doubted for the present, and specie alone shipped ; as this is received at the ice-house, the same money may be remitted to me.

"Concluding remarks.

"As the price and extra value of money in this country has subsided, and six per cent. the regular discount of paper on time, I wish you to understand, if you have an inclination to detain the money now due me, and which shall become due me from time to time, you can do so by allowing me the Havana interest, which I understand to be twelve per cent. per annum." (m)

MY REPLIES.—This letter, written some weeks before Mr. Bacon's death, afforded confirmation of a report from Boston, that Mr. Tudor had finally concluded to withdraw his ministers of war and annihilation, and to enter upon a rational course. It was responded to by me in four letters, under dates August 23, 25 and 30th, and September 1, as follows :

August 23. "Sir, Your letter of 8th July last, was received last evening ; and as the Cristobal Colon is about getting under way for New York, I have only time to say, that I think your letter supersedes the agreement deposited in the Consulado, by Mr. Bacon, and if so, I will make you remittances, from time to time, in some good vessels bound to Boston, as soon as I can obtain dollars or gold ; (I have some gold on hand,) for you must be aware that the order you gave in your letter ('send the same money received at the ice-house') would subject you to a heavy loss, as the greater part of the money received is in pistareens. It is hardly once a month that I receive a doubloon, and but once in a while a Mexican dollar. Almost the whole is in pistareens, with some small gold. A running policy, for some good

' (m) Here is a practical commentary upon the text, "*I have lost all confidence in his honesty* ;" which had been produced in his name, as a reason for his being permitted to keep me out of the possession and management of the ice-house,—which solemn asseveration, though it failed of its designed effect, had been attended with that of subjecting one to all the consequences of having such indwellers as Mr. Davenport and Mr. Bacon had proved to be ; and among them, to those "broils of a personal nature," in regard to which, after six months reflection, their imperial master had come to the conclusion that he might, without derogating from the dignity proper to his lofty nature, deign to say, "I have never employed Mr. D. and Mr. B. to engage in," &c. !

vessel or vessels, will be the best for you, as it will cover the money, and it is possible there may not be an opportunity for advising you in time by some other vessel."

I immediately consulted my lawyer in regard to the sufficiency of Mr. Tudor's letter to enable me to remit his money to him without subjecting myself to some new demand "in law," — as contra-distinguished from *equity*, — founded upon the agreement with Bacon. This lawyer, — Don José Agustin Govantes, whose bias is always in favor of *equity*, as contra-distinguished from the strictness of legal technicalities, and who is indebted perhaps to this bias as much as to any other circumstance for the celebrity he enjoys for skill in his profession no less than for probity, — decided at once in favor of its sufficiency; and, upon the strength of his opinion, I wrote to Mr. Tudor my second letter:

August 25. "Sir: I am informed by my lawyer that your letter of the 8th July last, wishing to drop all process in law, and that I remit you the amount of disbursements of the present year, together with your four fifths proceeds of sales, &c., supersedes any agreement made with Mr. Bacon respecting any disposition of the amount of proceeds of sales here; I have therefore made all diligence to change the small gold I had on hand into ounces, and ship you by the Brig Trenton, four thousand and one dollars, as per Invoice and bill of lading here enclosed.

"I will answer your letter of the 8th July in a few days, and I can see no reason why our affairs may not be amicably adjusted.

"Postscript. *For the better and quicker adjusting our affairs, I beg that you would remit me the particulars of Mr. Davenport's accounts.*"

Having thus disposed of the most urgent point, my third letter was:

August 30. "Sir: By your favor of the 8th July, received the 22d inst., I observe the prudent reflections you make to entirely conclude all law suits and differences which have unhappily existed between us. Certainly and with all confidence, I tell you, that neither Mr. Davenport nor Mr. Bacon have governed themselves by the orders or instructions which you say you had communicated to them; for, far from manifesting a desire to conclude the suits, they have done nothing but to promote them, exciting daily and repeated questions and refusing all the means of peace for concluding the differences, which I proposed to them. But I now see that all is going to be concluded in harmony; and *from this time forward I agree as you proposed, in that, the suits are concluded, each one paying his own costs, that*

in, the judicial costs, by the rule of adjusting costs which the court may have established in processes; (n) and now *that you acknowledge my right to the fifth, and the ten per cent. on the gross sales of the ice-house*, there exists *no motive of difference between us*, and we will continue in our quiet relations, as we were until the moment peace was unhappily disturbed between us.

"As it is not just the house should be charged with extraordinary expenses which Davenport may have made, I will thank you to remit me the minutes of the expenses charged in the account which you have enclosed to me. At present I will only advert to Davenport's salary from the time I arrived here, in March, 1835, to the time I took charge of the house, by order of the court, the 30th November, 1836, *none of which can be charged to me*. The bad debts at Matanzas, must have accrued through carelessness of Mr. Davenport, for permitting the account to run to such an amount. I was partially made acquainted with the loss at Matanzas by Mr. Bacon, when he forbid my giving any credit there; but having inquired the character and responsibility of the two customers from Matanzas, and found by report they were good, I concluded to continue the credit, but never intended to let it amount to a large sum. Nevertheless, one of them had taken, from the latter part of June to the early part of this month, rising \$400, as you see per Journal, from 10th to 20th; but immediately on application, it was paid; and there is little due from Matanzas now. I requested Mr. Bacon to give me the names of the persons and the amount of their accounts, to see if I could collect them; but he positively refused to do it, saying that it was an affair I had nothing to do with, nor should I have. I could do no more; but should you think it worth while to send me an account of what there is pending in Matanzas, with all the particulars, I will do all I can to collect it.

"For your offer to let me have money at 12 per cent. per annum, I thank you; but, as I have no need at present of paying interest at *any* rates, I decline your kind offer."

My fourth letter related to the accounts transmitted to me. It is as follows:

(n) It is to be noted, that this is no concession on my part. In reply to the peremptory summons with which Mr. Bacon had opened his mission in February, I had said nothing about costs. This point had been settled by the decision of the Supreme Court, which had been given "*Sin especial condenacion de costas*;" that is to say, leaving to each party the costs he had incurred. Such being the decision, I felt no disposition to go behind it and agitate the question of costs: although I knew, and every one knew who had any knowledge of the subject, that *equity* imposed upon Mr. Tudor, the obligation to pay, not merely all the expenses which his injustice had driven me to incur, but a heavy indemnity besides.

September 1. "Since my letter of 28th ulto., I have looked over the accounts you remitted me; and without the minutes which I have already requested, I cannot tell exactly how the balance ought to stand; but I am inclined to think it ought to be considerably more in my favor than you have made it. I *perceive I am not credited in your account remitted, my ten per cent. on the gross sales, which ought to have been done.* I see also there are *two* charges, of \$1078.06 each, in the year 1836; the first charge is said to have been for 'Discharging and storing ditto,' the second says 'ice-house disbursements.' I suppose one of these charges to have been through mistake. Mr. Davenport's salary, and the bad debts at Matanzas, have been mentioned before. By a statement of accounts made out to-day, as near as I could from the one you sent me, I make it that there was a balance due me to the close of yesterday, of some hundred dollars; but to get at it justly, it will be necessary to have Davenport's minutes, as I have before requested, and in the mean time I shall make you another remittance by some good vessel.

MR. TUDOR'S LETTERS OF SEP. 22 AND OCT. 6. — After the lapse of nearly two months, I received, on the 20th and 21st of October, two letters from Mr. Tudor, under dates the 22d September and the 6th October.

In the first, he acknowledges the receipt of one of the remittances sent him; gives some further directions in regard to the choice between bills and specie; and says, in regard to the accounts so long withheld from me:

"I shall send by this opportunity, the sales and disbursements as rendered by Davenport."

The second does not touch upon our difficulties at all, nor upon our affairs, except so far as to say:

"I shall write further on ice matters shortly. Your sales appear to exceed Davenport's twenty per cent. (o)

The letter is written for the purpose of stating the necessity, which had unexpectedly come upon him, to pay off a heavy "*mortgage*," (!) and of asking my assistance in raising a loan for him to the extent of his "next year's probable returns" from the ice-house, founded upon a pledge of the income of the establishment.

MY REPLY.—To both, I replied immediately, on the 21st Oct. In regard to the loan, I say,

"I will see what can be done in carrying your wishes into

(o) To which difference of twenty per cent. is to be added, the loss arising from sundry bad debts, (resulting from carelessness in allowing them to run up without collecting,) erroneous charges, &c. &c.

effect, and let you know as soon as I can ascertain what can be done."

Relying upon the restoration of peace between us, and having allowed the vigilance proper to a state of war to go to sleep, I did not advert to the bearing of this proposed withdrawal, by anticipation, of Mr. Tudor's share of the income during the ensuing year; that is to say, *for the remainder of our Privilege*. I, therefore, took the steps promised. But I found that what I supposed must be the case, was so, even to a greater extent than I had imagined. *The credit of the ice-house was down*. And how could it be otherwise? After all the litigation of which it had been the subject for nearly three years; to say nothing of the "Peace-officer" scandal, arising from the conduct of the representatives, whom, — upon the strength of the permission *provisionally* granted by the Court, ("until he should have time to substantiate his allegation of distrust,") to keep one man there, to see that I did not cheat him, — he had kept there for months and months, after being informed of their daily proceedings and habitual deportment.

Respecting the accounts transmitted by Mr. Tudor, I say:

Oct. 21. "The particulars of Mr. Davenport's account, as sent me, are *not such as I wanted*: I wanted a copy of his account, to see for what the money was paid; as I have written you heretofore, that I supposed he had charged money that never had been paid, so I see by the account you remitted, that an assistant had been paid from April to October, 1835, when in fact, that assistant had not been paid from the 1st of April, to the 10th of October, both inclusive, and I paid it myself in December last. I have good reason to think there are many charges that ought not to be: — I see there is a charge in Oct., 1835, of \$25.4rs., said to be for a fine. On the 26th Oct., 1835, there was a complaint made against a dog belonging to the ice-house, having bitten a boy that came after ice, when Davenport said the dog did not belong to the ice-house, but to me, and, therefore, he nor the ice-house ought to pay anything; but it having been proved on the spot, that Davenport had been in the habit of setting the dog on the negroes when they came after ice, and were making a noise by talking and whistling, &c., and that the dog was remarkable for his quietness and docility, the Commissary divided the costs of curing the boy between Davenport and myself, which was for me to pay \$34, and then a fine of \$10, as owner of the dog, with an injunction, that I move it away immediately. Davenport most likely paid his \$34 also; but I think he has charged the ice-house with \$25 $\frac{1}{2}$ of them. Davenport was also fined, in May or June of the same year,

\$100, for building a shed in the street to put ice-chaff in, without permission from the Government. This I do not see in any of the charges; yet, I cannot think he has taken it to himself without saying something about it."

MR. TUDOR'S LETTER OF OCT. 12. — Six days after despatching the foregoing request, that I should raise for him, by anticipation, the probable amount of income on his share, for the unexpired term of the Privilege, he writes, as follows:

Oct. 12. "Since my last, I have received your favor of 28th of August, which has been backward in reaching me.

"I somewhat fear, from the complexion of it, you are not disposed to bury the hatchet.

"You take exception to allowing the salary of Mr. Davenport, during the time you were in contest with him, — perhaps a year and a half. I can admit of no exception of this, or any other kind.

"In the common sense and understanding of mankind, when the great and main difficulty between two parties is adjusted, it is incident and a necessary consequence of such adjustment, that all minor points give way. I did not propose to admit as a right, that you should be ice-house keeper, whether I would or no. I admitted it, as expressed in my letter, in order to buy my peace. (p)

(p) There was no necessity of any such admission, or of any other admission, "in order to buy my (Mr. Tudor's) peace." My position had, from November 26, 1836, again become a purely *defensive* one. The possession and management of the ice-house had been compulsorily taken from Mr. Tudor's representative and restored to me, under a decision of the highest tribunal of the country, pronouncing it to be rightfully mine. From that moment, Mr. Tudor had become the assailant: I had not taken a single step against him, nor given out threat or indication of any. In fine, there was no such step for me to take after the decision in my favor; and, if there had been, both the necessity for it and the right to take it, would have been precluded by the provisional agreement, and the arbitration accord made in pursuance thereof.

Such having been our respective positions, it is in the highest degree preposterous in him, to say that he has done any one thing or another "in order to buy peace." Peace or war was so completely in his own hands, that it could come from him alone: Peace was a thing to be *given* by him, not to be *obtained*. If, therefore, his object in making his July move had been to *obtain* anything, that thing must necessarily have been something else than "peace." *Query* — was it the remittance of his funds? — Which his knowledge of *me* afforded the certainty, that I would not withhold a moment after he should have written anything that could be interpreted into a positive assurance, that he had relinquished his war projects and meant to adopt a fair course towards me.

I had, (so far as the Criterion's cargo was concerned,) engaged to pay those funds to his agent, Bacon. But, the very covenant in which I had so engaged, had been so widely departed from by B., — particularly in preventing the progress of the arbitration, — that grounds were by no means wanting for a perfectly *honest*, as well as *lawful*, refusal on my part to pay anything to Mr. Tudor, until all obstacles on his part, to the efficacy of the arbitration accord, should be removed; after which, sixty days, — or at furthest, ninety, — must have brought *all* matters between us to an end; and among these the questions, whether I was not to have my ten per

"If you go behind my proposition and take new exceptions, I am constrained to understand you do not accept of my proposition.

"I wait your further advices to decide whether we have adjusted or not."

MY REPLY. — To this I replied as follows:

November 11. "I am sorry my letter of 28th August, should have given you any fears respecting my disposition to bury the hatchet. I took it up when there was no other recourse. I am disposed to bury it when there is no farther motive for keeping it disinterred.

"I did not, nor do I now, think I ought to pay any part of Davenport's salary, from March, 1835, to November, 1836. He was, during that time, forcibly keeping me from my just and lawful occupation; or rather *you* were, through him; *but in order to buy peace*, (as you have expressed in your letter,) I will consent that Davenport's salary be charged as a disbursement of the ice-house; but never relinquish my ten per cent., nor fifth interest in the concern, while I have a property in it. These have been adjusted. These were the causes for which I instituted the suit. These were kept continually in view; and it was against these, that you, through Davenport, strove with me. It was on account of *these* that I have received such ill treatment from Messrs. Davenport and Bacon. The latter went so far as to say, he regretted the laws of the country did not allow people to go out and settle their disputes in their own way.

"I have no idea or inclination of occulting myself behind your proposition, nor of taking new exceptions; the exceptions which I make are those taken from the first, and they appear to me just."

MR. TUDOR'S LETTER OF OCT. 26. — At the end of November, I received from him two letters, under date Oct. 26, and Nov. 4. The latter has been already given, in a note to my letter of Dec. 17, 1836. The former, — with the exception of long details respecting his Calcutta and New Orleans business, and concerning improved methods of preserving ice, which he intended to patent, — is as follows:

Oct. 26. "I have your sales to close of September. You have not thought to give me the run of water, which I wish occasionally. (q)

cent. for the period of my wrongful dispossession, and whether I was to pay any part of the salary enjoyed by Davenport for dispossessing me.

But, so soon as what seemed to be a genuine olive branch was proffered by Mr. Tudor, I did not hesitate to believe him sincere, and to disarm myself by sending him his money.

(q) At first, as had been notified to Mr. Tudor, it had been out of my power to

"With respect to the accounts, I have, for the last six years, confided them to Mr. R. C. Cabot, but have lately made some changes in my assistants. On examination of the late accounts rendered you by Mr. Cabot, *many material errors have been discovered*, and it is needful to go over them all again. (r)

"Am I to understand you Mr. Bacon never made you the proposition in substance, which I made you afterwards, by a letter directed to yourself?

"I think the best way for us to *smooth down all the wrinkles and rough places, which appear to me to have been unnecessarily puckered up by intermediate agents*, — is for you to come home in a spirit of amity and peace. Here let us adjust all matters, and see what arrangements can be made for the future as well as the present.

"I should think if you left about Christmas time for New York or Rhode Island, or before, you could come on our coast before the severe weather sets in, and return in February with a stout cargo of ice.

"An important point to be adjusted relates to the funds after they come into your hands. You do not appear to be aware of the importance of placing money at once where it can be earning interest; amongst mercantile men this point is satisfac-

give him *the run of water*, (from the melting of the ice,) because his representative, Mr. Davenport, saw fit to refuse, (without any conceivable motive except the desire to thwart and annoy me,) to deliver the necessary key. This refusal was persisted in for some time; and, when at length I had succeeded in gaining admission to the part of the establishment where alone the run of water could be ascertained, I found that the water did not run at all; owing, as I conjectured, to the use of a bed of tan, upon which, according to one of Mr. Tudor's improved methods, the ice was laid.

In my reply to this part of his letter, I say: "For the run of water, I will refer you to mine of the 21st June last; we have not yet got down to the bottom," &c. &c. "In my letters of December and January last, I wrote you about the water and tan; but I have no recollection of your having made any reply. I would like to have your opinion about the tan, and see what can be done," &c. &c.

(r) It is to be noted, that this is *in reply to the remarks upon the accounts he had transmitted to me*, contained in my letters, and *particularly in that of Sept. 1*, wherein, — besides insisting upon the necessity of my being furnished with the *details* of the disbursements charged by Davenport, and pointing out that *his own* (Mr. Tudor's) account, founded upon D.'s, contained *two* charges of \$1078.06 each, the one for "discharging and storing ice," the other for "ice-house disbursements," — I say, "I perceive I am not credited in your account with *my ten per cent.* on the gross sales, *which ought to have been done.*"

Notwithstanding this explicit notice upon *this precise point*, besides the general bearing of my call for Davenport's disbursements *in detail*, Mr. Tudor, in a subsequent new declaration of war, under date December 16, grounds it chiefly upon the assertion that this is a *new demand* on my part! Referring to my letter of November 11th, he says: "You *now* claim the ten per cent. when you were not doing the duty." The truth is, — as Mr. Tudor had been informed by his agent Bacon, — if he had informed him of any truth, — that my right to it had been invariably asserted, and my positive determination not to relinquish it, had been invariably declared. Of this, Mr. Tudor was fully aware, when he wrote his letter of July 8.

torily adjusted by keeping an interest account. Mr. Touro allows me interest from the day he receives the money in New Orleans from the keepers, and charges from the day of remittance. This is just and satisfactory; instead of losing by it, the contrary is the case; because it often happens that he may have an over supply of his own money, which he has no present means of getting interest for, and he over-remits, which throws the balance of interest in his favor at the end of the year; or, it may be convenient to have the funds awhile; against which I have no objection, provided they are on interest. To have money lying dead in a strong box and irregularly remitted, confuses all calculations and spoils all regularity and content.

"I have written you about not making objections and putting in new claims. (s) Having conceded the main points, (t) I can-

(s) "New claims!" See the foregoing note.

(t) *What "main points?"* If I was not to understand his July letter as a revocation of his January proclamation of perpetual war and endless attacks; if I was not to understand it as any engagement to desist from all further molestation, and leave me in quiet possession of the rights adjudged to me (and *secured* to me) by the decision of the Supreme Court; what "main points," what points of any kind, could he be considered as having, in any sense of the word, "*conceded*?"

To be sure, his instruction to his representative had been, (at least, so far as he tells us what it had been,) "to propose to accord to your right to be keeper at ten per cent. *while you were actually on duty*." How, under the circumstances, was I to understand this qualification otherwise than as having reference to the *future*? The only thing in Mr. Tudor's *power*, (as we have seen he had been convinced, sorely against his will,) with respect to the "right" which he here proposes to "accord to," had, since the 26th Nov. 1836, been, to choose between leaving me in quiet possession of it and harassing me in the way that has been seen. The only thing which it lay in his power to deprive me of, was *peace*; and peace was the only thing which it lay in his power to grant or "*concede*." The past was gone; he had done his best and his worst; and the result had been, *first*, a decision affirming my right, (of course, for the *past* no less than the *future*,) and its restoration to me, by the juridical power of the State; and *next*, the maintenance of that right by my own firm hand, strengthened by the consciousness of right, against all his threats, and wiles and stratagems. Such being my position, and his, how could his proposal be considered otherwise than as substantially a proffer of *peace*, and nothing but peace, upon the one condition, that, upon dropping law, "each should pay his own costs?" What else than peace had he to *give*? What else to offer, except the assurance that I should no longer be harassed; that the right and the possession which, by a final and conclusive judgment, had been *secured* to me, I should be left in the *quiet enjoyment* of? How could the qualification attached to his acknowledgment of that right be considered as otherwise than *prospective*, and as *prospective only*? How could the words be considered as having any other meaning than this;—in acknowledging your right to be ice-house keeper and to the ten per cent., I mean to be *strict* and *rigid* with you; it shall hold good only for such time as you shall be *actually* on duty; you are not (as heretofore, during occasional absences) to enjoy the right of employing a substitute on your own account, and meanwhile receive the ten per cent.: the instant you cease, at any time, to be *actually* on duty, your compensation shall cease!

This was the only light in which the nature of my position and that of Mr. Tudor permitted the matter to be viewed. To suppose that this qualification was intended to have a retro-active operation, was forbidden by the very nature of the case. If it be objected, that it is expressed by a verb in the past tense: ("*while you were actually on duty*,") the answer is, that this form of speech is in daily and

not go any further. Upon reflection you will perceive that more than I have conceded cannot with any justice be expected.

"After the expiration of the present contract in Havana, if I do not make some arrangements with you, I propose to throw the business open to free competition, reducing the price to three cents,—preferring, however, a renewal of the contract, and adding the reduction of price. A new house must be built in the neighborhood of the Machina.

habitual use with reference to future events, and when its sense is identical with that of "should be." Moreover, unless it be taken in this sense, it actually has the effect of *restricting* absolutely to the time *past* that acknowledgment of my right which he proposes to make; and this makes the proposal absolutely nonsensical; for there was no period whatever to which it could have reference. Referring to time past, there was not a single day during which I had been "actually on duty," with respect to which my ten per cent. constituted the ground of claim on my part, or of denial on his.

Mr. Tudor's words, then, are, in meaning, identical with the following: "to propose to accord to your right to be keeper at ten per cent. while you *should* be actually on duty." And there is this difference between the acknowledgment here made, and the qualification attached to it: that, while the latter is purely prospective, the former is essentially retro-active as well as prospective; for, unless the reverse be expressly stipulated, it necessarily attaches to the period during which I had been unlawfully deforced. But even if this were not the necessary consequence of such acknowledgment of my right, there is one thing absolutely self-evident; the acknowledgment here made does not contain anything to *exclude* such claim on my part. In its terms, it relates altogether to the *future*. The circumstances in which it was made were such as to put the *past*,—except for the purpose of *retribution* from him,—altogether beyond his power; and so likewise was the *present*, so far as regarded all consequences of the decision in my favor; among which consequences was my undeniable right to the ten per cent., from the period during which I had been deforced.

Certainly, then, my acceptance of it, as the basis of a final concord between us,—even if it had not been, as we have seen that it incidentally chanced to be, coupled with a simultaneous demand to be credited with this ten per cent.—could not admit of being interpreted into a surrender of this right. And yet, (as will hereafter be seen in Mr. Tudor's letter of Dec.) when he had again resolved upon *war*, he grounds this new resolve upon a charge of breach of faith, resting entirely upon this preposterous interpretation! Referring to his own words, "while you *were actually on duty*;" and to mine in reply, "I now see that all is going to be concluded in harmony, and from this time forward I agree as you propose;" he assumes that my insisting upon the ten per cent., for the period during which I had been unlawfully dispossessed by him, is a breach of the agreement so expressed by me! He refers, too, to my assertion of this right as having been first made on the 11th of Nov. Even if this had been true, and if the very words quoted by him, "from this time *forward*," had not expressly restricted my agreement to "drop law" to the future, saving all past results of law; even then, the fact would have been of no moment whatever. What if this demand had not been made by me until the date named by him? The delay could, at most, have been considered as circumstantial evidence, (and this of the very slightest kind,) that the demand was really *his* as he asserted it to be,—*"a new objection."* But, in truth, there had been no such delay; the date of the letter from which he quotes, is August 28; and, on the 1st September,—so soon as I had had time to examine his accounts, and to discover that I had not been credited with the ten per cent. for the period in question,—I wrote to him that his accounts must be *corrected* in this particular.

His attempt to falsify the date of my demand, in order to give a semblance of plausibility to his charge of ill faith, serves no other purpose, therefore, but to betray his consciousness of the necessity of misrepresentation, and to multiply the evidences of his own *animus* in this and other respects.

"When these plans are carried into effect, I expect my Havana business may rise to its original position, of being the first, instead of its being, as it now is, the lowest of all my regular establishments.

"I have been prevented from carrying into effect there, (u) the low-price plan, which has been so perfectly successful in every other place, and exactly as I had calculated.

"*My hope and expectation* is, that you will be disposed to preserve your connection with me in this business. I think it for the interest of both that it should be so. The fallings out which you have had with Mr. Davenport have reached me only at second hand; and although much has been said by various persons against you, *I give you my word I have never considered my interest and property otherwise than safe in your hands.*

"My willingness to confide in you, in spite of the trouble which you have caused me, must show you that in the main, great point of *integrity, I do not and never have doubted you.*

"As you promised me you would never have a law suit with me, I had supposed you never would; but the difference between having it with me or with Mr. Davenport is a distinction without a difference. (v)

"In conclusion, I think we can do nothing by correspondence, in the way of settlements of any kind; and that your presence here will be absolutely necessary, to effect the object desired by both; therefore I say, choose your own time and come."

MY REPLY.—My reply is a very long one, consisting chiefly of details respecting my transactions with Davenport, affording the explanation that had been requested of me. The rest is in reply to the points presented by his letter:

Dec. 3. "As it respects the accounts, I think there can be no

(u) If he really believed he had an unquestionable, exclusive right to decide upon this point "there," (at Havana) and if he felt so perfectly sure as to the result, why had he not availed himself of the opportunity offered by the long period of two years, during which the establishment had been under his absolute control?

(v) When and where had I drawn any such distinction? Has it not been seen that, in speaking to him of my law suit with Davenport, I always spoke of D. as his agent? Had I not always spoken of *himself* as the actor, and D. as the mere instrument?

When and where had any such promise ever been given by me? It is an absurdity, on its face. A promise "never to have a law suit!" Would it not amount to an absolute surrender of a man's rights? Is there a court of justice in the world that would hesitate an instant in pronouncing any such promise an absolute nullity? But, waiving this objection, suppose such a promise to be binding in law, to be not void but only *voidable*, like other contracts; and suppose that I had entered into a *bond* to that effect,—where is the tribunal of law, or the court of conscience, that, under view of the facts of my case, would hesitate to pronounce that they had released me from the obligation, and that my having entered into it only served to render the conduct of Mr. Tudor the more inexcusable? Where is the man that could view that conduct, under such circumstances, in any other light than that of an attempt to take advantage of one who had allowed his hands to be tied?

difficulty *when you shall have corrected the material errors which you say you have discovered in them.*"

In regard to proposals from Bacon, I give him a good many details, and among them the facts, that he never would make me one in writing, nor in presence of any third person; and that the reason assigned by him for insisting upon the stipulation empowering him to appoint an inspector to see to the sales of ice had been, that "*you (Mr. Tudor) had no confidence in me.*" I inform him that the last proposal from Bacon, so far as my memory served, had been, to buy me out, upon the condition that I should waive my claim to all participation in the profits during the time that Davenport had had the management.

With regard to his new proposal, I say:

"In respect to the funds after they come into my hands, I do not see as I can do otherwise than remit, from time to time, the portion which may belong to you. If I were in business, where I could employ them from day to day, I should have no objection to keeping an interest account. If I were in business, as Davenport was, with cigars, while he had the handling of the money, I should think it a great favor to have the use of it in that way." And I state some facts in regard to D.'s capital, and the enlargement of his business whilst he had the handling of the ice-house income.

Mr. Tudor's pressing invitation to come to Boston is replied to by saying:

"Nothing would please me more than a trip to the north, but I must defer it for the present; for I fear the consequences of a winter voyage in my present state of health; besides I have some little affairs which require my care."

And in reply to the concluding part of his letter, I say:

"I thank you for the expression of confidence. It is a *positive contradiction of repeated assertions* of Messrs. Davenport and Bacon."

MR. TUDOR'S LETTERS OF NOV. 15 AND 18.—Mr. Tudor's next letters were under date Nov. 15 and 18. In the first, he presses for further remittances, and urges anew that I should repair to Boston.

Nov. 15. "The balance now due me must be about eight thousand dollars, and it is very important to me to have this sum with the least possible delay. I have urgent calls for money, and the amount due from you will help me much. I must request you to remit at once and largely.

"I hope my letter of Oct. 26, will have reached you, as it was duplicated, as it was important, and showed you, in a strong manner, the absolute necessity that exists for your coming here,

for a correct and satisfactory adjustment of accounts, and to make arrangements for the future."

These passages, as moves in the game which Mr. Tudor was then playing, (and which was soon to be further developed,) are entitled to especial attention. Let the circumstances under which he presses for remittances, "*at once and largely*," be noted.

In July, he transmits his accounts. Immediately on receiving them, I reply by pointing out one heavy charge, as being to all appearance erroneous, and one omission (my ten per cent. during Davenport's term) as *certainly* erroneous; and I insist upon the necessity of my having Davenport's accounts *in detail*. Mr. Tudor's answer to this, on the 26th Oct., is: "on an examination of the late accounts rendered you by Mr. Cabot [they had been rendered by himself, signed with his own hand] many material errors have been discovered, and it is needful to go over them all again."

"*Many material errors*," says Mr. Tudor. And yet, mark! how perfectly vague and indeterminate. No specific notice of *the* errors pointed out by me. And especially, nothing whereby I could know positively, whether he did or did not acknowledge the *omission of my ten per cent.* to be one of the "many material errors." From such a reply to such a letter as mine, the fair presumption, (as would be decided by any court of *equity* or even of *law*,) was, that the acknowledgment in question *was* intended. Still, this was matter of inference only; notwithstanding the strength of which, Mr. Tudor might hereafter, (as it will be seen that he did), choose to consider my claim to this ten per cent. as "a new objection" on my part.

Such, then, was the state of the case when this demand for remittances, instant and large, was made. There lay the canceled accounts, and nothing had come in their stead, to enable me to know how much would really be due to Mr. Tudor, after the "many material errors" should have been corrected.

In the concluding paragraph of the above quotation from his letter, he refers to his previous letter, as showing, "in a *strong manner*, the *absolute necessity*" for my repairing to Boston. On recurring to the letter, it will be seen that it does not contain any such demonstration; the strong show consisted entirely of strong assertion, intermixed with no small quantity of *palaver*, or what is, now-a-days, called *humbug*, which I thought it advisable not to burthen these pages and bore the reader with. Nor did any such necessity exist. Even supposing my presence in Boston to be indispensable to the making of those "arrangements for the future," with the grand perspective of which Mr. Tudor had deigned to amuse me; it was by no means indispensable that

those arrangements should be welded on to the "adjustment of accounts." The former regarded the "*future*" solely; the latter had nothing to do with it, and related solely to the *past*. For the latter, the one and only "absolute necessity" was, that Mr. Tudor should really *do* what he had made a show of doing in July; and the hollowness of which show, (on its being detected,) he had made a sort of apology for, by throwing the blame on "Mr. R. C. Cabot." He had but to send me a new and revised edition of those very same accounts, — his own and Davenport's, — the "material errors" all corrected, and the thing was done. I should then know the exact amount due to Mr. Tudor; and if my readiness to remit it was not proved forthwith, it would be my fault. Meanwhile, if I should "err on the safe side," Mr. Tudor could blame no one but "Mr. R. C. Cabot," or himself. My experience of late years had not been altogether of a nature to obliterate the lesson I had had in 1834, respecting the consequences of a dependence upon bank accommodations; and I did not see the necessity of putting myself again to the same school.

Mr. Tudor's letter of Nov. 18, is, — with reference to my ten per cent. claim, — still more entitled to attention. With the exception of some details having no relation to our settlement, it is as follows:

Nov. 18. "I had this moment the pleasure to receive your letter of Oct. 21, covering sales," &c.

"The general tone and complexion of your letter is very satisfactory to me, and convinces me more than anything heretofore, that we shall be able to heal amicably our differences.

"With respect to what you say about Davenport, I cannot particularly reply, but only say, in general terms, that I do not and did not approve of his accounts; but he was in a state of extreme depression, arising from recent losses and poor health. I resisted, for a long time, settling his account; but he troubled me by such frequent visits and sorrowful lamentations, that I finally settled with him, deducting from the balance which he claimed, \$600 or \$700, besides a suggestion of large amount which he thought he was entitled to, for extra services.

"With regard to your own accounts I have heretofore said that I think the only way in which they can be settled (*w*) is for

(*w*) "The *only* way in which" accounts can be settled between two men, the one at Boston, the other at Havana, is, for the latter to go to Boston! Merchants may smile; but Mr. Frederic Tudor is a very extraordinary person, and he must not be judged of, by the rules applied to the concerns of the profane vulgar. From him, this was no novelty; it was not the first time, nor the second, that he had pronounced it to be impossible that our accounts should be adjusted without my going to Boston. This impossibility occurred at a very early period in our part-

you to come here, when we will settle up all old affairs and start afresh.

"I renew to you my wishes expressed in my last, respecting remittances. The vessel being just spreading her canvas, I must hasten to a conclusion."

Here again, total silence in regard to my demand of the ten per cent. for the period to which the accounts "rendered by Mr. Cabot" had reference. Here again, so far as this silence goes, very good ground for the inference, that the omission of a credit for that ten per cent., (*which had been particularly pointed out by me, as an error in the account,*) was one of the "many material errors" acknowledged in Mr. Tudor's reply, and ascribed to Mr. R. C. Cabot. But silence is not the only thing we have here. We see, how "very satisfactory" my letter of Oct. 21 had proved, and how far it had gone to convince him, "that we shall be able to heal amicably our differences." Now, on turning back to this letter, it will be seen, that the only thing contained in it relating at all to "our differences" is, the notification to Mr. Tudor, that the form in which he had seen fit to transmit Mr. Davenport's accounts was altogether *un-satisfactory* to me. Connected with this piece of information, is a reference to what I had "heretofore" written on the subject. Now, on turning back to these, my "heretofore" letters, the very first we come to, is that of Sept. 1, wherein I tell Mr. Tudor *twice*, that "without the minutes, [Davenport's,] which I have already requested, I cannot tell exactly how the balance ought to stand;" and wherein also, I specially demand the credit for my ten per cent.

MY REPLY.—The two last-mentioned letters from Mr. Tudor, being received together, were both answered in mine of Dec. 21; from which the following extract, in reply to his instruction to "remit at once and largely," will suffice:

Dec. 21. "I also observe what you say about remittances. I cannot conceive how you make such a balance due you, unless you have thrown out entirely the preceding accounts; (x)

nership. I thought, (and thought correctly, as the event proved,) that I was free of debt; or that I owed him, at most, a very trifling amount. Under this belief, I had engaged to a friend in Boston, to unite some of my funds with his, in an investment he had proposed. Lo! and behold! Mr. Tudor's account comes forward, showing that I owed him \$5,000!! And I could, for a considerable time, obtain no other answer from him on the subject, than that I must come to Boston.

The details of this business afford a good sample of my position as Mr. Tudor's partner, with regard to accounts. They will be found in the Appendix, (G.)

(x) That is to say, the accounts which had been transmitted by him in July; but which proving *false*, had been withheld ever since, in order that they might "all be gone over again." Mercantile men cannot fail to render the proper tribute of admiration to this improvement in the art of book-keeping, for the benefit of those who "have urgent calls for money," and consequently wish for remittances, "at once, and largely."

and if so, there was, on the first of this month, about \$10,000 due. But I cannot see why these old accounts should be laid aside; *there is nothing more easy* than their settlement, *when they shall be made out corrected.*"

MR. TUDOR'S LETTER OF DEC. 1. — Mr. Tudor's next letter, under date December 1, encloses a *triplicate* of that all important one of Oct. 26, which had, so satisfactorily to his mind, demonstrated the "absolute necessity" of my repairing to Boston, leaving Havana "about Christmas time, or before, so as to come on our coast before the severe weather sets in." (*y*)

The letter contains nothing requiring notice here, except the Postscript, which is as follows:

Dec. 1. "*Perfectly convinced*, as I am, that there is *no real disagreement* between us, I am the more induced to urge you (as done in my late letters) to come home *at once*, as being the only way every point can be amicably and satisfactorily adjusted."

NEW DECLARATION OF WAR, DEC. 16. — Mr. Tudor's next letter, under date Dec. 16, ("about Christmas time or before,") is his new Declaration of War, as follows:

"Sir: I have at hand (*z*) your favor of 11th ultimo. By that you take additional exceptions to an adjustment to those of your letter of 28th August. (*a*) You now claim the ten per cent,

(*y*) *And* arrive here just in time to fall snugly into the law-trap, which I have been contriving for you. The reader will presently see what this addition means.

(*z*) *When* had it come to hand? It is marked in my letter book as having been sent by a vessel to Baltimore. The postmark, then, by showing at what time it had reached Boston, would enable us to judge whether this reply to it, (or truly speaking, this *pretended* reply, the *pretext* for which is *falsely* taken from it,) had been delayed. If such delay did occur, what was the motive? Was it, that, in case of my having yielded to his urgent invitation to repair to Boston, this new war missive might not reach Havana until *after* "about Christmas time or before?" Was the letter delayed in order to make sure that it should not reach Havana until, as Mr. Tudor knew, I should either have embarked for Boston, or have decided not to undertake the winter voyage? Let this query be borne in mind.

(*a*) How does Mr. Tudor get at this "letter of 28th August?" By passing over that of September 1, the last of my *four* letters, in reply to his of July 8; of which four, that of August 28, was one. His particular reference to this one, therefore, serves no other purpose, than to prove the more particularly *his own consciousness*, at the very moment he brings the charge used by him as the pretext for his new move, of its utter untruth. Had he contented himself with merely asserting, that my claim was a new one, and an "additional exception" to the adjustment proposed by him, the assertion, although untrue, would not have been to so flagrant a degree, intentionally so. Highly improbable, as such a piece of oversight or forgetfulness would have been, particularly under such circumstances as those wherein we stood, still, it was within the bounds of *possibility*, that he should have overlooked or forgotten the tenor and import of my letters prior to that of November 11th. But when, in order to make out his *case for war*, he undertakes to substantiate his charge of ill faith and double dealing, by a reference to my letter of August 28, (to get at which he has to "go behind," — as he terms it, when speaking of my course, — that of Sept. 1,) the only effect is, to deprive himself of the benefit of even this exculpatory possibility, and to prove his assertion to be, not *merely false*, but *designedly and deliberately so*.

when you were not doing the duty. In my letter of 8th July, I expressly said, 'I would accord your right to be keeper at ten per cent. while you were actually on duty.'

"In your letter you say, 'I now see all is going to be concluded in harmony, and from this time forward, I agree as you propose,' &c. (b)

"In your letter of 11th November, you say, 'I will consent that Davenport's salary be charged; but never relinquish my ten per cent.' &c., meaning the ten per cent. during the sales which Mr. Davenport had the charge of making under my instructions.

"It is rather to be regretted there was ever any attempt made at adjustment. To claim the payment for services not rendered, is something new, in your list of claims and wrongs. It goes expressly to deny my right to displace you, as ice-house keeper. (c)

(b) Note here, that even the letter referred to by him does not admit of being applied to his purpose, except by stopping short at the words, "as you propose," and supplying the place of what follows by a convenient "&c." On referring to my letter, it will be seen that the very sentence, here so dexterously clipped by him, establishes clearly the sense in which his proposal was understood and accepted by me. Immediately after the above words, and without so much as a *comma* to separate them, my letter runs, "in that, *the suits are concluded*, each one paying his own costs, by the rule of adjusting costs, which the court may have established in processes; and, now, that you acknowledge my right to the fifth and ten per cent. on the gross sales of the ice-house, *there exists no motive of difference between us*"

Does not this explain the sense in which I understood his *acknowledgment of my right*? Had he never been informed by his representative, Bacon, that *I specially insisted*, as a *sine qua non*, upon my ten per cent. during the period of my unlawful deforcement? And even if he had never been so informed, would not my meaning have been made clear, beyond doubt, by my speaking of his acknowledgment as putting an end to *all* "motive of difference between us?"

(c) This denial, it must be confessed, — particularly after the decision of the Supreme Court, — was a thing unheard of before! Consequently, if there was any such tendency in my claim, as the one here pointed out, it also *must* have been "something new."

But, to be serious: if he meant here, that the claim was "new," as coming from me, the assertion has been already sufficiently replied to. If he meant that it was a novelty, considered with reference to the usages and the notions of justice prevalent among men, or the rules maintained by Courts of Law, the assertion requires no reply; for every one knows it to be as destitute of truth as it has, in its other sense, been proved to be. Why were the "services not rendered?" Because I had been unlawfully deforced from rendering them. Because, instead of being allowed to do so, in peace, and quiet, I had been *driven*, (though, from his language *after the result*, it appears that Mr. Tudor had not *intended* to drive me: believing that I would not have the *heart* to venture upon so perilous an undertaking!) — because I had been driven to establish my right to render them by a law suit, which, even after I had astonished him by my temerity, in risking myself upon the ocean of litigation, he had flattered himself with the idea of worrying and wearing me away in, until the "chapter of accidents" should favor him so far, as to rid him of so troublesome a person, or hope should die away in my bosom through failure of the means to pursue my rights.

This was the reason why the services had not "been rendered." And where is the Court of Equity or of Law, in the world, or where is the just and honest man, by whom it could fail to be at once decided, that services "*not rendered*" for such a cause, did but make the title to compensation the stronger?

"All agreements of adjustment being now at an end, I shall proceed to transfer the suit from Cuba to this country.

In regard to the pretence set up by Mr. Tudor in this letter, that this claim was an "additional exception," first advanced in my letter of Nov. 11th, it has not only been disproved, but the course pursued by him, from July to December, with respect to this very point, has been seen to have afforded very solid grounds for the belief, on my part, that the claim was understood and admitted by him, and that I was not to consider it as being included in those "*exceptions* of this, or any other kind," which, in his letter of Oct. 12, he informed me he could not admit.

Referring to what is contained on this subject, in the notes to his letter of Oct. 26, I will here point to another of these grounds, contained in his peace-offering letter, of July 8.

Besides the implied recognition of this claim, involved in his acknowledgment of my "right to be keeper at ten per cent.," the last mentioned letter contains a passage, which, taken in connection with the accounts that accompanied it, and with his subsequent course respecting my correction of those accounts, constituted a very strong reason, for my believing that this claim was among the things expressly intended by him, to be acknowledged. The passage is as follows :

"The fifth interest, to the termination of the contract with the Government, to be admitted on my part."

What does this mean ? Is this admission prospective merely, or does it go back, and embrace the period during which I had been unlawfully dispossessed ?

It is evident, that, whether we take for the rule whereby this question is to be solved, the *equity* of the case, or the *law*, (as pronounced by all the tribunals that had given a decision in the case,) or Mr. Tudor's *dictum*, it stands upon the same ground, identically, with the same question in regard to the acknowledgment of my right to the ten per cent. Whatever may be the solution in regard to the one, that same solution, if true, must be true with regard to the other.

By the *law*, I had been recognized as the managing partner of the ice-house, and my deprivation of the possession and management, by the act of Mr. Tudor, had been pronounced absolutely unlawful. By this decision, my right to the compensation as manager, and my right to a share of the profits as partner, were so blended, as to render it impossible to separate them for the time past. In regard to the future alone, could this be done ; and then, only by the act of the law, except my free consent was obtained.

If we take for our rule Mr. Tudor's *dictum*, we see a similar connection. He had deprived me of the post of keeper and the compensation attached to it, because he possessed the right to do so. He had declared my fifth interest to be forfeited, and had appropriated it to himself, because he possessed the right to do so. Both rights were claimed in virtue of one and the same contract. It is true, that the one was claimed absolutely, and the other, only as contingent upon my refusal to acquiesce in the exercise of the former. But this ground of distinction had become obliterated, the moment he had declared that, the case of forfeiture having arisen, the forfeiture had been incurred, and the confiscation had been made. From that instant, his contingent right had become no less absolute than the one which was so originally ; and his right to deprive me of my interest and of the profits thereon, was of exactly the same character as his right to deprive me of the post of keeper, and the compensation attached thereto. All right on my part to either, was gone.

Such is the result of the application of Mr. Tudor's *dictum* to the question. When, therefore, by his letter of July 8, he made known to me, that he had come to the conclusion to *acknowledge my right* to the compensation, and to *admit* my fifth interest, what ground had I for supposing that the same rule was not to be applied to both ? What reason existed for supposing, that if the *admission* was to be retrospective, the *acknowledgment of right* was not equally so ? If the one extended back to the time when Davenport's unlawful possession began, what reason was there for supposing that the same extension was not to be given to the other ?

When, therefore, upon examining the accounts transmitted with this letter, I discovered that credit had been given me for my fifth share of the proceeds, but

"In the meantime, my contract with the Cabildo not admitting that I should not continue to ship the ice, I shall make the necessary shipments, and allow you as ice-house keeper, twelve hundred dollars per annum, and leaving it to the Courts to determine whether you have or have not, by your injurious proceedings, forfeited your conditional interest in the contract.

not for the ten per cent.; and when, in answer to my letter particularizing this omission, as one in regard to which the account required correction, I received Mr. Tudor's reply, acknowledging "many material errors," and ascribing them to his *book keeper*; (a person who, though accurate as a mere *accountant*, might be supposed to have misunderstood Mr. Tudor's views and intentions respecting the *principles* on which our account was to be stated,)—under all these circumstances, what reason had I for not supposing that the omission so pointed out by me, was one of those *book keeper's* "material errors," for the purpose of correcting which the accounts would have to be "all gone over again?"

It is true that Mr. Tudor, in the letter now under examination, (Dec. 16,) points to the qualification, "*while you were actually on duty*," attached to the *acknowledgment of right* contained in his letter of July 8. The import of these words has already (see notes to his letter of Oct. 26) been under examination, and the qualification has been seen to be essentially inapplicable to the past, and entirely prospective. But waiving this, and confining ourselves strictly to the mere comparison of the two: if Mr. Tudor could point to this qualification, in proof that he did not intend his *acknowledgment* to be retrospective, why could he not point to the qualification attached to his *admission*, in proof that his intention had been the same with regard to that likewise? With regard to the letter, he says: "and the right to the fifth *while you performed the condition*." And he goes on, too, laying great stress upon the point, that my right to a fifth of the proceeds was a purely precarious one, "*always*" depending upon the performance of the condition; and then affirms, that the condition had *not* been performed during the past two years; although I had "*now apparently*" returned to this duty, and hence his willingness to return it. As evidence of any such intention on his part, as that of restricting to the time future, the operation of his *acknowledgment* or of his *admission*, the qualification attached to the latter, is therefore, decidedly the stronger.

When, at the termination of his six months fit of cajolery, he found himself once more ripe for war, he might have taken this ground in regard to the latter, with a somewhat better face than he could in regard to the former. In the position wherein his own letters, (when viewed in connection with mine,) placed him, had he, in December, thought proper to take the ground, that his intention had never been to allow me the fifth share of the proceeds, *for the time I was* "*not fulfilling the condition*;" and that the credit for such fifth in "the account rendered by Mr. Cabot," had been one of the "many material errors," committed through said book keeper's misconception of his (Mr. Tudor's) *principles* of adjustment; had this ground been taken by him, his July letter would actually have furnished him with a better pretext for it, than the one drawn from the same armory, resorted to by him in justification of the position which he did assume. And if, in regard to the ten per cent, he could say, "to claim the payment for services not rendered, is something new in your list of claims and wrongs;" could he not with equal truth, justice, and wit, apply the same taunt to the former, and say, "to claim, in regard to an interest which you had forfeited absolutely, and which my magnanimity has restored to you, the profits during the very period when you were engaged in harassing your benefactor with cruel law suits, proves you to be deeply read in the code of gratitude no less than of law."

Of the two taunts, the latter would have been the better in the point of plausibility: for, whilst the former, consisting as it does of a mere denial of an universally recognized rule of law and justice, is absurd upon its very face, the former is made up, in a great measure, of untruths which are not so obvious, and to which Mr. Tudor has contrived to give circulation wherever his word is relied upon.

" My instructions to you are :

" 1. Forthwith to remit, in good bills, endorsed by a good house in Havana, eight thousand dollars.

" 2. To remit, at the end of each month, *the whole* of the receipts of the ice-house; deducting the current expenses, and your salary, pro rata, of twelve hundred per annum.

" 3. You are at liberty to refuse the \$1200, of course ; but, if you do so, *you* must put in a good and capable man to perform the duties, *render me accounts*, and *deposit the money* where it will be accessible to me. [Moderate requirement! Mr. Tudor must have supposed that 'excellent men,' were no less abundant at Havana, than at Boston. See Appendix, (E).]

" 4. If these remittances are not made, but the money detained from me, the interest at twelve per cent., you have to allow.

" The high rate of interest, it is necessary for me to charge, because I have negotiated a loan, on *perfect* security, for \$ 30 m.; for which I have to give ten per cent. per annum. My money, therefore, in Havana, *without* security, is worth to me at this time, twelve per cent.

" In no case whatever, if you refuse to remit my moneys, can I take less than the rate I mention and be just to myself; but I do not wish them kept even at this rate; my want of money at this time being particularly urgent.

" Postscript. Respecting the interest for moneys you may detain against my instructions, you will observe, I offered you eight per cent. with the premium on bills, for the loan I lately wished you to negotiate. This premium was about four per cent., which would make up the amount of twelve per cent., which I offered myself.

" I propose to demand *here*, monthly, the amount of the sales as they occur, unless remittances are made according to instructions above."

Referring to the remarks contained in the notes, I will point out one additional particular in which this letter affords evidence of the writer's character, and respecting the reliance which is to be placed in the correctness of his statements.

The general purpose for which this letter was concocted, is seen to be, to lay the ground work for the pretensions he meant to advance in the law suit, then still in embryo, but upon the point of springing forth, Minerva-like, from the brain to which he had, in Feb. 1835, been indebted for his accuracy of recollection in regard to what he had "all along understood," to be the exact nature of our respective rights. Collateral to this purpose, is that of intimidating me into making an immediate remittance of the sum demanded, and of all future moneys arising from the

ice-house sales ; he, all the while, holding back the accounts from which alone I could know what was due to him ; which accounts he had once pretended to send, and, upon the detection of their errors, had promised to transmit a new edition of.

Among the particular purposes embraced in the general scheme, one is seen to be, to establish a ground on which (pretty well assured that his intimidation-attempt would prove a failure) he might hereafter claim to be allowed an interest of twelve per cent., upon the moneys so demanded. Seeing that the rate of interest allowed by law at Havana, even upon a debt proved, is only *six* per cent., this attempt to set the law aside, by the virtue of a mere notification from Mr. Frederic Tudor, is sufficiently ridiculous, and in good keeping with the rest of his doings. That he was not altogether insensible of its weakness, is shown by his labored attempt to justify the higher rate, by an argument founded upon the peculiarity of his position, at the moment, as a borrower. By way of bolstering up this argument, he recurs to the subject in a *postscript*, and produces another, resting upon the assertion that he had himself lately offered me twelve per cent.

Now, this assertion is altogether *untrue* ; and its untruth is rendered the more particular, and special, and pointed, by the manner in which he tells it, by way of making it good. He says, "I offered you *eight* per cent., *with* the premium on bills, for the loan I lately wished you to negotiate. This premium was about *four* per cent., which would make up the amount of *twelve* per cent."

The proposal here referred to is the one contained in his letter of Oct. 6, already spoken of in the proper place. It had not been an offer *to* me, but a "request of you to assist me in this matter by making a negotiation for me ;" which negotiation was to be founded upon a pledge of the ice-house income. But the important point now is, *at what rate of interest* did he then propose to obtain this loan ? The answer shall be given in his own words : "I have therefore to request of you to undertake to assist me in this matter by making a negotiation for me, to effect on reasonable terms my wishes *while bills on this country are to be had at a discount*. Out of this discount I expect to be able to pay all the premium which the lender would require, and to pay about at the rate of *eight per cent. per annum* on the sum wanted." In other words, although the rate at which the money may be borrowed for me shall be *twelve* per cent., yet, as I (Mr. Frederic Tudor) shall gain about *four* per cent. in the purchase of bills, I shall in truth only "pay about at the rate of *eight* per cent. per annum."

Behold ! again, then, Frederic Tudor, Esquire, painted by him-

self. Here is a new specimen of the accuracy of his statements, and of the exactness with which he can tell us what he has "all along understood." And this, whether the subject in regard to which his memory and understanding are taxed, be one that carries him back three months merely, or eleven years. Whatever the time may be, 'tis all the same to him; he is always ready, always sure, and always exact. Let it be supposed that this negotiation had taken place, and that I had chanced to lose his letter of Oct. 6. Let it be supposed that I had obtained the loan for him at twelve per cent. and had paid this interest, and charged it in my account. And suppose, that at the end of one, two, or more years we had come to a settlement. Under this state of the case, can it be supposed further, that if the circumstances had been such as to require it, Mr. Tudor could have been otherwise than perfectly sure, that he had *not* authorized me to *borrow* this money on his account, but had only proposed to borrow it of *me*? Can it be supposed that he would not have been absolutely certain that he had expressly stipulated that I should not charge him with more than *eight* per cent., and that he had taken the trouble to explain to me, at the time, how I could gain for myself *four* per cent. upon the exchange, so as to complete the twelve per cent. usually paid at Havana? Can it be supposed by any one, that he would not have been positive upon the point, that he had "all along understood" this to be the nature of the transaction?

Besides its value in this respect, Mr. Tudor's postscript deserves attention in another point of view. It here leaks out, that the money which he requested me to assist him in borrowing from some one else, he secretly intended and expected that I would step forward and advance to him out of my own pocket. At least, he tells us that he made the offer to *me*; and this is a point upon which he was more likely to recollect the naked truth itself, in regard to what he really intended, than the particular wrapper for it which he had happened at the moment to take up and to use. This naked truth serves to throw an additional ray of light upon the nature of the game, in which Mr. Tudor's July letter was his first move, and his December letter the last.

Two days after writing it, to wit: on the 18th December, 1837, he instituted a suit against me, founded upon *the averment* (which, if I mistake not, has to be *sworn to*) *that I had received, and refused to remit, money of his to the amount of twenty thousand dollars.* (d) And upon the strength of this, he obtained an

(d) Just one month before, (see preceding letter of Nov. 15,) he had written, "the balance now due me must be *about eight thousand dollars.*" This was *his own estimate*. And this even could be arrived at only by throwing "out entirely the preceding accounts." See preceding reply of Dec. 21, and also note, (x.)

attachment upon my property at Boston to the extent of \$25,000; an attachment which [through a further act of *diplomacy* of his, as will hereafter be seen] subsists to this day, and has done me serious injury; for which, possibly, I may one day be indemnified.

MR. TUDOR'S LETTER OF DEC. 18.—On the same day, his memorable “fixed determination,” respecting the price of ice, awoke from its three years’ sleep; and, as will be seen from the following extracts, displayed an energy proportionate to so long a steeping in the invigorating element:

“I now give you positive and unconditional orders, immediately upon the receipt of this letter, to reduce the price of ice to,” &c. &c. “I require that you obey these orders *to the letter*. If you do not, I shall seek my remedy. I will not allow you to evade the execution of these orders upon any pretence whatever. I demand of you entire and unconditional obedience.” He winds up by saying he is “not willing to have my interest suffer and *the public be abused*, by the exorbitant price which has too long been demanded for ice at Havana, in consequence of your refusal to obey my orders.”

It does not occur to him here, to inform us what he had “all along considered” to be the cause of this iniquitous extortion, *during the recent period of about two years and two months*, when the establishment had been in the possession of one most ready “to obey orders;” a possession which, we have seen, began through no other cause than *the difference then dividing us upon this very point!* Why had he not seized the golden opportunity for giving these orders, during the period when his agent had, in pursuance of orders, informed me that my presence in the establishment was an “intrusion,” and that it was Mr. Frederic Tudor’s sovereign will and pleasure, that I “must no longer harbor there?” His *conscience* had, it seems, at length, roused up, to reproach him with the consequences of her own sleepy-headedness. I say his *conscience*, because it is to this alone that the determination could be ascribed. It could but proceed solely and purely from his regard for that innocent “public,” which had been so long “abused.” To be sure, he says that one of his motives is, that his own “interest” may no longer suffer. But this is nothing but an artifice of his humility, to cover up, as far as possible, the noble generosity towards the public which his conscience had kindled up, to warm her numbed limbs by.

When it is considered that our Privilege had but one year more to run, and that nothing but dead loss could ensue from the reduction, unless the demand should instantly become about

treble what it had grown up to be in the course of about thirty years' vegetation; when it is considered, that to yield the same net profit even, something like *three* pounds of ice would have to be called for where *one* had been called for before; and that this change must take place instantly, — who can believe, for a moment, that Mr. Tudor was actuated by a calculation of "interest?" Perhaps, however, I ought to say of *our* interest; for, although it is evident that *our* interest must have suffered, and consequently *mine*, yet, with regard to his own share of the suffering, he might possibly have had *ulterior views*, affording a promise of remuneration *after our Privilege* should have expired. Be this as it may, one thing is certain; that, so far as the proposed reduction was to bear upon me, it was, on his part, a most disinterested sacrifice to the dear "public." With respect to the short remnant of our Privilege, he was aware that the almost certain effect of the reduction would be to reduce even the gross amount of sales about one half; and with respect to *the future*, he flattered himself that the year 1838 would see the end of Mr. J. W. Damon's interest in "the Havana ice-house;" a new contract must then be made, and this Mr. Tudor would take care to secure for the "rightful proprietor," *himself*; after which, Mr. D. should be welcome to dispose of his share of the *building* to any one who would give him a cent for it. This was the calculation.

On becoming apprised of this new move of Mr. Tudor, I wrote to the friend upon whom the attachment had been served, saying:

"Your favor of the 19th ulto. is before me. I must say that I did hardly think Mr. Tudor would have broken out again in such manner as he has; but still, there is no telling what one will do, particularly one so choleric as he. I know not how he is going to act, nor in fact what it is he claims; therefore we know not how to answer. It is, I should think, impossible for him to make a suit in Boston, on account of the *administration of the ice-house*, because that has been decided in my favor here."

MY REPLY.—On the subsequent day, I replied to Mr. Tudor as follows:

Jan. 6, 1838. "Sir: Your letters of the 16th and 18th of December, ulto. are received, and unhappily I see that you have come out against me again; that you are not only desirous of law suits, but, according to a letter from Mr. Hobbs of the 19th, you had already commenced by suing me for \$20,000, and trusting him for \$25,000. I am ignorant of what may be the cause, and your object, of this judicial presentation; but be they what they may, you may rest assured that it does not intimidate

me, for my proceedings have been just and conformable to the rights which I have, as an associate in the ice establishment.

"Some time since, you ought to have replied to me respecting the accounts, either approving or making your objections to, or observations upon them; for without this requisite, we shall not be able to ascertain our respective balances. In the same manner, it is necessary to settle the account of Mr. Davenport; crediting the ten per cent. commission which belongs to me as per our contract.

"It is not my wish to have disputes and law suits; let us then act in good faith, and all our differences will be adjusted on the principles of justice.

"You are well aware that, by sentence of the tribunals of this Island, in the unjust suit carried on against me by Mr. Davenport in your name, it has been decided that the administration of the ice-house belongs to me; and, although as a partner, you can instruct me in the mode in which it is to be conducted, nevertheless, you have no right to injure or lessen my interest through resentment or revenge. I, therefore, consider the reduction you propose in the price of ice, to be highly prejudicial, because it will result to the benefit of the ice-cream makers only; private families will not consume any greater quantities than they do now, as the reduction will not be an object to them to increase the consumption.

"So sensible are you of these facts, that on a former occasion you desisted from the same project, being convinced of these truths.

"Let us then come to a settlement of our accounts, that there be no longer any differences between us; for, I repeat it, I do not wish to have disputes and law suits, but at the same time I will not consent to be injured."

To this reply, I will here add what I wrote to him three months after:

"The part of the profits belonging to you is in my trunk; and the reason I have not remitted it is, *your refusal to make out, and settle accounts of three years standing*. When this is done, and you shall have raised the interdict on my property and person, I shall have no objection to remitting your part of the profits; but until then, I shall."

REVIEW OF THE YEAR 1837.—Thus closed the year 1837. It divides itself, as we have seen, into two periods. The one commenced with quite an ingenious attempt, by availing himself of my critical position, as *his* security, to surprise and terrify me into a surrender of the right just adjudged to me by the Supreme Court. The beginning and progress of the second, is marked

by a no less skilful manœuvre for drawing me out of my citadel, and inveigling me to a banquet of "peace and amity" for the present, and enlarged prosperity for the future, at Boston.

In regard to the latter, we have seen, that, so late as the beginning of December, Mr. Tudor kept on writing to urge me to repair to Boston; "*perfectly convinced*, as I am, that there is no *real disagreement* between us." We have seen, too, that when, on the 16th of that month, he considered the moment as come for firing his new mine, he had to resort to untruth, — and did resort to untruth, not in one shape solely, but in several distinct forms, — in order to reconcile these reiterated *perfect convictions* of his with what seemed the most plausible pretext he could lay hold of for declaring "all agreements of adjustment at an end; and commencing his ingenious preparations for my reception at the banquet to which I had been so entreated, by suing out the writ above mentioned.

It remains only to remark, that when this deed was done, he knew perfectly well, that, before any notification of it could reach Havana, I should either have decided not to visit Boston that winter, or should have already left "about Christmas time or before," so as to "come on our coast before the severe weather sets in."

In the former case, further delay on his part could serve no purpose. The latter, however, is what he wished and hoped for; we must either believe that he had taken the trouble to write his reiterated *urgings*, and particularly his long *triplicate* demonstration, "in a strong manner," of the "absolute necessity" of my coming, without the least expectation of their having any effect; or we must believe that he expected my arrival. At any rate, he had used all the *diplomacy* in his power to insure this event.

Suppose me, then, — having landed at "New York or Rhode Island," as Mr. Tudor had suggested, — stepping out of the rail road car at Boston, "in a spirit of amity and peace," repeating to myself, out of his last letter "there is no real difference between us;" and, out of the long *triplicate* demonstration, "*Here* let us *adjust* all matters, and see what arrangements can be made for the future as well as the present." Here then, I am once more on the old spot; I wonder which of my old friends I shall first catch sight of. I feel a tap on the shoulder, "Mr. Damon, I believe, sir?" That's my name. "A writ, sir: You will have the kindness to accompany me to the sheriff's office, and then send for some friend to bail you in the sum of \$25,000." But, it turns out that Mr. Tudor has made a mistake; his book keepers make so "many material errors!" On looking further into the matter, and particularly on taking into consideration the injury

to his interest resulting from my disobedience of his orders to reduce the price of ice, and other gross misconduct, he has discovered that, debts and damages taken together, *fifty* thousand dollars is a very small estimate. And so, \$50,000 is the amount now claimed, and for which Mr. J. W. Damon must find bail.

But, bail such as this, Mr. D. cannot find. His early friends belong to the "inferior class;" and even supposing some of them tolerably well off, it would, taking the average, require at least a hundred "poor miserable carpenters" to justify for \$50,000. Moreover, be they rich or poor, it does not accord with Mr. D.'s notions of justice, that their benevolence towards him should be abused so far as to expose them to ruin, and their wives and children to want, through "the chances of the law." And so, he remains in prison; the "wretch,"—as he had been called by Mr. Tudor's representative at Havana,—has got his deserts at last. He is snugly encaged.

Mr. Tudor forthwith despatches a new agent to Havana, armed with a new "Poder Generalísimo," and with documentary proof that J. W. Damon is in jail and "can't get out," upon the strength of which, as the ice-house necessarily requires some responsible person to manage it, said "Apoderado Generalísimo," contrives soon to get possession. And thus does Mr. Tudor's July device turn out to be more effective than the January one; the "spirit of peace and amity" contrivance, a decided improvement upon the *mortgage* and "temporary ice-house" machinery.

§ 11. — 1838. — *Last Year of the Privilege obtained in 1830. — I apply for a Renewal of the Privilege, and inform Mr. Tudor of it. — Measure adopted by me to secure to him and to myself our Respective Shares therein, on the same Terms on which we had originally become connected. — He makes no Reply to my repeated Inquiry, whether he consents to become a Party to the New Privilege. — My Application is granted by the Authorities; but the business of closing the Contract with them is kept in suspense by me, waiting for Mr. Tudor's Answer. — An Answer finally extorted from him. — Its Character. — Power of Attorney from him, and Letter accompanying it. Insufficiency of the former, and Treacherous Nature of both. — This Answer leaves me no Option, but to close the Contract in my own name. — Mr. Tudor informed of this, and that I am still willing to admit him. — He despatches Mr. Fenno to Havana, as his Attorney. — Nature of the Power under which Fenno is sent to act. — Proof embodied therein, of Mr. Tudor's Non-acceptance of my Offer, and of his Treacherous Designs. — Settlement of Accounts with Fenno. — Fenno returns to Boston. — Conflict between our Statements respecting what had passed between us on the Subject of the New Contract. — Circumstantial Evidence in support of the Truth of my Statement. — More of Mr. Tudor's Treachery. — New Attachment on my Property at Boston. — Bills drawn by him. — My Offer to Purchase his Share of the Building erected in 1831-3. — Demolition of the Building ordered by the Captain General. Absurd Calumny on the Subject. — Suit instituted by Mr. Tudor at Havana.*

WE now enter upon the last year of my association with Mr. Tudor: one in which, when least expected, my deliverance from thralldom came to pass; and this, through the unaided operation of those very same qualities in my partner which had rendered it so hard a one.

Except that I was now free, — certainly, a most material difference, — from the endless petty annoyances of those two representatives of his, whom he had “never employed to engage in broils of a personal nature with” me, my situation was very much the same at the commencement of 1838, that it had been at the beginning of 1837. The reader need not be told that so far as depended on the good will of my partner, nothing was wanting to the resemblance. I continued to transmit the usual tri-monthly statements of sales, &c.; but he saw fit to make no acknowledgment of my communications.

SUPPLY OF ICE.— This was the subject on which it lay most in his power to harass me. His course in regard to it may be judged of from the following extracts :

Jan. 23, 1838. [To a friend in Boston.] “ From the enclosed copy of my reply to Mr. Tudor, you perceive that I do not immediately and unconditionally obey his letters of the 16th and 18th December. In fact I shall not obey them in any of their requirements; nor shall I make *any more* remittances so long as he continues to hold on, as he has lately expressed himself.

“ Although he has said he should continue to ship ice, it may be that he will not; and if he should refuse to ship, I want Mr. — to be ready to ship, or to procure some one else to do so, in March or April. It is likely Mr. Tudor will ship before then, if at all.”

Feb. 11. [To Mr. Tudor.] “ Although there have been several arrivals from Boston, within these few days, I have no letters from you of later date than the 18th December last. I fear they may have been lost. Our supply on hand will probably carry us into April; it may carry us well into that month; it will depend much on the sales. I have been anxiously waiting for the accounts for the time Davenport was in the ice-house, and also your account of disbursements for the past year. I hope they will soon be here, likewise letters giving account of the probable time you shall begin to ship ice here.”

Feb. 21. “ It is now over two months since I have any dates from you. I hope soon to hear that you were about shipping some ice for this place, as we shall probably be in want of it by the last of March or the first of April. I also hope you may soon send your revised accounts, as it is very necessary that they should be settled, and to settle them, they must first be made out and presented.”

Feb. 22. [To a friend in Boston.] “ It is possible we may have enough ice to the latter part of April; but if the sales continue to increase as they have thus far during this month, I think it will not last any longer than the first, and I hardly know what to do about ordering some on my own account, until it is certain that Mr. Tudor will not send any; and to wait for this, it will, perhaps, be too late for me to go into the market to buy. There is no other way but to speak to some of the ice dealers and take their ice, if Tudor does not send any, at the best price you can get it; and this, I hope Mr. H. has done. If it got here by the middle of May, I think it would be in time to prevent the penalty. I want every care taken, and exertion made, to have ice here by the time above mentioned, if Mr. Tudor should not ship; and if there should not have been any ice shipped by him,

by the latter part of March, I want some one to go to Mr. Tudor and ask him if he has shipped, or intends to ship any ice here, and that you be governed by his answers at that time, and one more which you must get from him about the first of April. If about the first of April he should say that he would not ship, or if he should give you an evasive answer, you can wait a few days and see whether he makes any move; and by the middle of April, you can begin to look for a vessel, and have her sail about the first of May. I would not wish to interfere in this shipping of ice, if Mr. Tudor is going to do it himself; but, if he is not going to ship ice nor remit the accounts, but institute suits against me and my friends, I have no other recourse but to act as I have above directed, and I think I shall be justified in it."

March 1. [To Mr. Tudor.] "My late advices respecting the quantity of ice on hand, and the probable time it would last, I think will turn out correct."

"On the next page is an account made out, with a division of the profits. I regret exceedingly that you have not seen fit to revise your account for the time Davenport was in the ice-house, so that we may be able to bring the accounts for that time to a close; also the amount of disbursements in Boston for the past year."

March 12. "I have no dates from you later than the 18th December last, although vessels have arrived from Boston with dates to the 25th ult. As I have written you frequently, and have received no answers, I fear that my letters may have been lost, and I send this under cover to Mr. H., requesting him to hand it to you. In my letters to you, I have given statements of the time the ice would probably last, and I thought you would have advised me when you intended to ship some more, and have remitted the unsettled accounts. My estimates of the time the ice would probably last, have been to the last of March, or the first of April, and that it would be very necessary that we have some about that time, or we shall be liable to the fine."

March 12. [To a friend in Boston.] "When you present the enclosed to Mr. Tudor, (if he has not already sent ice here,) I wish you to ask him, if he is going to send any ice here, and if he is going to do anything towards remitting his revised accounts. If he should not have done anything towards shipping ice by the middle, or at least by the last of April, I wish you to ship me some, let it cost almost what it may; and if you begin, I want you to ship something like eight or nine hundred tons, so that there be a sufficiency for the season. Mr. Tudor may think hard of this, but I think those best acquainted with the affair, will say I have no other means of protecting myself;

whenever Mr. Tudor will act in an open and just manner, I have no disposition to act otherwise than as we commenced in 1824."

March 21. [To Mr. Tudor.] "I am still without any letters from you since the 18th December; although there have been several vessels from Boston, and some quite late in February." "I hope soon to have answers to several of my unanswered letters; likewise, to have your revised accounts, and information when some ice would be shipped."

April 1. "By the above, you see the sales of March, this year, have not increased much on March of last year; therefore, there is more ice on hand than I expected there would be, sometime ago, when I was making my estimate. On the third page, there is an account made out of the sales and disbursements, together with a balance struck, and a division of the profits.

"The part of the profits belonging to you is in my trunk, and the reason I have not remitted it is, your refusal to make out and settle accounts of three years standing. When this is done, and you shall have raised the interdict on my property and person, I shall have no objections to remitting your part of the profits; but until then, I shall."

April 10. "Yesterday I received a letter from Mr. J. Fenno, informing me that the ship Canton Packet, was taken up on the 19th March, for a cargo of ice for this place, which I was glad to hear, as we shall soon want some."

Thus ended my suspense and anxiety on this subject.

RENEWAL OF PRIVILEGE. — This was the subject, Mr. Tudor's course in reference to which, proved the cause of my final deliverance from all connection with him. It is one to which I bespeak particular attention. Considered in itself, it affords, unless I greatly mistake, sufficient grounds for a judgment regarding the respective merits of my course, and that of my partner. And yet, the reader who has favored me with his patience thus far, will be ready, I think, to testify that it is impossible for any one to do justice to my partner or myself, in regard to this final transaction, without that previous knowledge of our respective characters and positions, which is afforded by the facts that have passed under review, beginning with his "Memorandum of Proposal" in 1823. Above all, is it indispensable, that he should be acquainted with the course pursued by Mr. Tudor throughout the year 1830, when the last renewal of the Privilege had been obtained by me. With this caution to the reader, I will now produce the few remaining links of that chain of facts, which I have thought it due to myself to lay before the public, as my reply to the misrepresentations of my *soi-disant* patron and benefactor.

Feb. 21, 1838. [To Mr. Tudor.] "I had an intimation some time since, that there might possibly be an application for a contract for supplying this city with ice after the present one expired; and, to be in advance of any one in this business, I presented a memorial asking the prorogation of the present contract. I am told that Mr. Davenport immediately made a stir, and I hear M——'s name is connected with him in it. It is said that D. in this stir, styled himself '*the ancient administrator of the ice establishment*,' &c.; (*antiguo administrador, &c.*) and I am also told that the future contract, so far as the Cabildo is concerned, is secured for ten years, on the same conditions as the present one is, and it now only waits the approbation of the Intendant respecting the tonnage duty."

"P. S. By the words 'same conditions,' &c., it is understood that the contract is for a medio the pound; the penalty \$4,000, in case of a deficiency of ice for twenty days in succession; and, that it is taken jointly in your and my name, *four fifths and one fifth*."

Feb. 22. [To a friend in Boston.] "You see the new contract is to be for Mr. Tudor and myself; but there is a clause to be inserted in it, that if Mr. Tudor does not accept of it, then it will belong to me without any further proceeding. It may be he will say as he did when I obtained the present contract. (e) If so, it will be mine, if I am alive and have my health."

(e) See the events of 1830, and particularly towards the close.

The following extract from my memorial to the Cabildo, will show exactly the footing on which I had placed the subject. The application for the Privilege was made by me, and in my own name solely. I had no authority from Mr. Tudor to act in his name, and the reader need not be told, that,—in regard to him, of all men,—such a step was not to be ventured upon, without the most express and unquestionable authorization. Nevertheless, he was made secure by the following clause:

"In the understanding, that I, the undersigned, take the contract for myself and for Mr. Frederic Tudor, of the City of Boston, (the contractor and my partner in the contract which expires this year,) on the following terms: I am to have, besides the administration on the same terms as before, one fifth part in partnership with said Tudor, who is to possess the other four fifths; or we will come to such agreement on the subject, as may best suit us; and in the unexpected event, that Tudor should not accept either of these alternatives, then and in that case, the undersigned to have the contract to himself alone."

This, if I mistake not, will be viewed as precluding all doubt in regard to my intentions towards Mr. Tudor; and as fully justifying the assurance in that respect, given by one of the members of the Cabildo to the lawyer, (the one employed on the part of Mr. Tudor in our suit of 1835-6,) whom Mr. Davenport had endeavored to enlist in the opposition got up by him, to my application for the Privilege. Mr. Davenport,—under the pretence, if I mistake not, of being actuated by zeal for Mr. Tudor's interests,—got up the opposition just mentioned, and urged the lawyer formerly employed by Mr. Tudor, to second his efforts. But, on receiving the assurance above referred to, this lawyer was satisfied; and,—owing no doubt, to his refusal to have anything more to do with Mr. Davenport's machinations,—the opposition was desisted from.

March 12. [To Mr. Tudor.] "I wrote you on the 21st ulto., that, so far as the Cabildo was concerned, I had got the present contract prorogued for ten years; and that it waited the consent of the Intendant, for the relinquishment of the tonnage duty. This has not yet been done, but I have hopes it will be before long."

March 31. [To a friend in Boston.] "As it respects the suit in Boston, I know nothing about it. Mr. H., on the 9th, knew nothing; and I think it will remain as it is, for a trap, so that if I should ever arrive in Boston, the trap would be sprung upon me; and that was probably the intention when the demand was made, thinking that I would arrive without any knowledge of what he had been doing, until the summons should be presented, and perhaps, an order for prison, or security in the sum of 20, 30, or 40,000 dollars. In such a state, I should have been rather badly off; and so I shall be, if Tudor can keep the suit hung up over me as long as he pleases."

"The Intendant has granted a suspension of tonnage duty on ice vessels for five years, from 31st December, 1838. This I shall communicate to Mr. Tudor, probably, to-morrow."

April 1. [To Mr. Tudor.] "I have just received information, that the Intendant has agreed to suspend the tonnage duty on ice vessels, for the space of five years, commencing the 1st January, 1839."

April 21. "I observe what you say in your letter of 24th March, about current expenses, &c. I have seen no account of current expenses in Boston or Havana, excepting those made out by me, and forwarded to you from time to time, for more than three years past. I have asked accounts of you frequently, but as yet, have not received any. I am well aware of the existence of an indenture made the 28th March, 1831, and I have always considered it valid. In one of your letters of last year, you said, 'in addition to the \$ 2500 agreed to be sent here, to cover disbursements, from the first proceeds in Havana, is to be added, \$ 600;' &c. The impression on my mind is, that there was an understanding, if not committed to writing, that \$ 2,000 were to be remitted in all May or June, for disburse-

This incident, viewed apart from all the facts with which it was connected, will be seen to be of a nature to afford ground for a plausible charge of ill-faith against me. And, accordingly, it has been used for the purpose. I have been represented as having circumvented Mr. Tudor, by means of a solemn assurance, that I was seeking to obtain the contract for him. At this calumnious misrepresentation, the reader will feel no surprise; but what will surprise him is, the fact that the incident which has afforded the pretext for the calumny, has been made the ground of a judicial decision, recognizing Mr. Tudor as the four fifths owner of the contract [See Appendix (A)] entered into by the authorities with myself alone!

ments in Boston ; and it appears to me, that remittances have been made in that manner until last year, when it could not be, on account of the paper made in the Consulado, by Mr. Bacon. These \$ 2000, in all May or June, were considered as money sent on to be used for disbursements, *while the account was making out.* As soon as I get through with the Canton Packet, I will make a remittance for disbursements; and I am sorry that you will not make out accounts, so that we may come to a settlement."

May 9. "Enclosed you have an account made out, of sales and disbursements for the past month, together with the second of exchange on Messrs. A. & R., for disbursements in Boston for this year; and, as I wrote you in my last, covering the first of exchange, as soon as you will make out the accounts, we will settle them. I have requested you many times, that you would send me the items of Davenport's accounts of sales and disbursements, for the time he was in the ice-house, but receive no answer. I would wish to know whether you have received those letters or not; if you have not, I will send you duplicates; if you have received them, I cannot conceive the motive you have for not sending them to me. It certainly is nothing more than right that I should have them. If you had sent them at the time I first requested them of you, our accounts would long since have been settled.

"You never have said anything in answer to my letters on the renewal of the contract with the Government. I would like to have your opinion on that subject, of approbation, or disapprobation; and, for fear that my letters to you have strayed away, I send this under cover, and beg that you would give your reply immediately to that person, so that he may convey your opinion to me. The opinion above mentioned, is intended and understood to be, WHETHER YOU ACCEPT of this new contract or not; and your reply is expected to be DEFINITIVE."

May 9. [To a friend in Boston.] "I have written to Mr. Tudor several times about the new contract; that is, I told him I had applied for a renewal; and then told him I had obtained it, with the exemption of tonnage for five years. I now write to him to tell me positively, whether he accepts it or not; and I inclose the letter to you open, so that you may read it, and then seal it, and either hand it to him yourself, or get some trusty friend to do so. I want to force an answer from him, either accepting of the new contract, or refusing it. Although I think I should have been justified in obtaining the contract for myself alone, yet I could not but offer a part to him, notwithstanding his conduct towards me."

May 12. "Yesterday a Spaniard by the name of —— put

into my hands, two papers, said to be the copies of a writ served against my property in the County of Suffolk, and against you as trustee; together with the sheriff's return, saying he had attached all my real estate in said County, and all credits, &c. in your hands, and on account of my not being an inhabitant or resident of said County, the Court issued its order or rule, authorizing Tudor to notify me by sending authenticated copies of said writ and rule to appear before said Court to answer to said writ, &c. Now, to-day a cargo of ice arrived, and a letter from Mr. Tudor, saying he had taken up another vessel for ice for this place; so I shall be very busy on ice for some days to come, and shall not be able to do anything towards sending on my defence. But if nothing happens to me, I will attend to it as soon as I can, and, in the mean time, I wish you would employ some good, energetic lawyer to attend the Court, and (if the case should be brought forward when the Spaniard makes his return of having notified me) to have the suit put off for another term; and also for the said lawyer to get all the information he can, and write me what is wanted, and what I must do; that is, whether I must send on old settled accounts, or any letters of Tudor's, or what; for I declare I owe Tudor no such sum as he has declared in said writ. I may owe him something; but there is no telling how much, until he renders his account for the time Davenport was in the ice-house, (and I despoiled of my property.) These accounts, I have requested of Tudor, time after time; and he makes no reply *since he said he had found material errors in them*, and it would be necessary for him to go all over with them again. When Tudor makes out his honest and just account, I shall be ready to settle with him; and if it should be found that I owe him one dollar, or twenty thousand, he shall not wait one day for his pay; *more* than this, I cannot say; *less*, I have no disposition to say. But, to remit money to Tudor, and let my funds get into his hands, as I did from about 1827, up to 1834, *I shall not*. I remitted him, a few days since, \$3000, to defray the expenses of shipping ice here this season; and I shall remit him *no more until he sends in his just account*."

June 21. [To Mr. Tudor.] "There are vessels from Boston as late as the 24th May, yet *I have nothing from you in answer to my various inquiries respecting the new contract*."

July 1. "I have been waiting anxiously for you to remit the accounts for the time Davenport was in the ice-house; so that we might settle *them*; and *then*, the subsequent ones. *I have written you a number of times, respecting the renewing of the contract with the Government for the supply of ice*. On this neither, have you written me a word, and I am at loss to con-
 .

ture the reason why you have not; but *if I do not hear from you soon on this subject of the new contract, it will be understood and taken for granted, that you do NOT ACCEPT of the contract lately made with Government.*"

July 11. "Your letter of 1st ulto., acknowledging receipt of a bill, on Messrs. A. & R. of \$3000, is received; but *you make NO ANSWER to any part of the letter covering that bill.*"

At length Mr. Tudor saw fit to break his long silence in the following letter, received by me on the 19th July, from the opening words of which, it seemed that the plan which I had adopted of propounding my final interrogatory, in regard to the new contract, through a third person, had not been entirely without effect.

June 22, 1838. "Col. Hobbs has furnished me with your esteemed favor of 9th ulto.; many others, with sales, are at hand regularly. You have not said anything respecting the new contract which makes it objectionable, and I now inclose you Power of Attorney to execute it, requesting copy of the contract on sealed paper and also of the bond.

"As you had objected in advance to the principle on which alone I could make out the accounts, also hold out unbounded additional exceptions to be taken, I have heretofore considered it not necessary to forward them; but as not sending them is your only ground of possible complaint against me, and as it may be your intention not to continue in endless contests,—that you are willing to concede as well as to be conceded to for peace,—as agreed in your letter of Aug. 29th, 1837;—in this hope I send the accounts, in conformity with my letter of July 8th of the same year.

"I send them so made up as to give you the ten per cent. on gross sales while you have been on duty, as ice-house keeper, and one fifth interest; but if they are not promptly settled, (f) my sending them in this form must not be construed into an admission of a right belonging to you, to charge the ten per cent. or the one fifth interest. I make this reservation to avoid future misconstruction of my motive in making the accounts in this form. I make in this settlement large concessions. (g)

(f) The events of the past year,—to look no further back,—had been sufficient, one might have supposed, to convince him that I was not to be *terrified* into the acceptance of accounts, full of "material errors."

(g) It will not escape attention that *here*,—in the very letter inclosing his Power of Attorney,—is an emphatic reiteration of his old denial of "a right belonging to" me, not only in regard to the ten per cent., but in regard also to my "*fifth interest.*" In stating his accounts in such a way as to "*give*" me the ten per cent. and one fifth interest, he makes "large concessions," for the sake of a *prompt settlement* of these particular accounts. But he protests against these concessions being "construed into an admission of a right belonging to" me.

" Having but faint expectations (from the general tone of your late letters) that an adjustment can be effected, I am making my arrangements to come with my family, to reside the next winter in Havana. I shall then, at my leisure, place my business on a proper footing. I have been too long absent from Havana." (h)

The Power of Attorney accompanying this letter was as follows:

" Know all men, &c., that I, Frederic Tudor, &c., do hereby ordain, constitute and appoint John W. Damon, of Havana, in the Island of Cuba, to be my true and lawful attorney, for me, and in my name, place and stead, to sign, seal, execute and deliver, in due legal form, a certain contract, made by the said Damon with the Cabildo and other authorities of the city of Havana aforesaid, for supplying the said city with ice for ten years; and also I do hereby further authorize and empower the said Damon, in my name, place and stead, to make, sign, seal, execute and deliver, to the content of the Cabildo and other authorities aforesaid, a sufficient bond for the faithful performance, on my part, of the stipulations and agreements in said contract set forth, on my part to be done and performed; hereby giving and granting to my said attorney full power in the premises, to do all lawful acts,

After all that the reader has seen of Mr. Tudor, he will learn without much surprise, that this letter was concocted by Mr. Tudor's legal adviser and conveyancer and junior partner, James W. Fenno, Esq.; and it was concocted with an express view to the contesting of the very right here protested against! For this, I have at least the word of Mr. Fenno. Although the fact itself affords not any ground for surprise, on the part of any one acquainted with Mr. Tudor's previous mode of proceeding towards me, on numberless occasions, yet the circumstance of its being made known to me by Mr. Fenno, does, I am aware, seem rather strange. The reader knows, however, that diplomatists are not always as discreet as they should be; and that the desire of giving themselves consequence in the eyes of others not unfrequently gets the better of prudential reserve. For the fact that this piece of information was derived by me from Mr. F., I can give to the reader nothing better than my word, unless Mr. Tudor and Mr. Fenno should see fit to be examined under oath in regard to the secret history of the letter. That the particulars relating to it which I give as derived from the latter gentleman, are, if an invention of mine, at least not a *new* one, is proved by the following extract from a letter to a friend in Boston. Speaking of the proceedings instituted at that place, by Mr. Tudor, as calculated to drag me again over the same old weary way that I had been compelled to travel in my two years suit at Havana, I say:

June 7, 1839. " This is just what Tudor wants. It is what Fenno [in his last conversation, wherein his discourse partook of the warlike] said they *intended upon*, when they wrote me the letter of the 22d June, 1838, accompanying the power which Tudor sent me, to make the contract in *his* name. You will see, on turning to that letter, that it is a cunningly written one. It was (as Fenno said) written *by him*; and although the *first* of it came in Tudor's hand, the duplicate came in Fenno's, signed by Tudor."

(h) The reader knows that I had long been of the very same opinion; particularly during the seven long years throughout which it had been his pleasure to leave me to contend, single handed, with the numberless and endless difficulties into which I had been entrapped by his "just generosity," in selling me a share of his "any Privilege."

matters and things which may be necessary for the purpose of making and effectually concluding the contract aforesaid, and of giving the bond aforesaid."

On perusing this document a doubt arose in my mind whether it could answer the purpose. My determination had been, that the footing on which I should stand with respect to my partner, under the new Privilege, should be such as to preclude all room or pretext for quibbles in regard to its precise nature. My measure of experience was now full in regard to the natural consequences of being in any way dependent for my peace and quiet upon any *discovery* which he, or any learned counsel of his, might at any time make respecting what he had "*all along* considered" to be the terms and conditions of our — association. I was about to say *partnership*; but the reader is aware that in our law suit, and even subsequently to its final decision in my favor, Mr. Tudor had maintained that I never had been his *partner*. (i)

Such being my determination, it struck me, on perusing Mr. Tudor's Power of Attorney, that it would have been far more consistent with my object, and with the character of the contemplated contract, as made known to him, and certainly quite as easy to him, to have constituted me his attorney for the execution of said contract *in our joint names*, instead of the single name of Mr. Frederic Tudor.

Another suspicious feature in the document, and which suggested, if it did not warrant, the idea that it was designed as a trap, was, the "sufficient bond for the faithful performance, on *my* part, of the stipulations and agreements in said contract set forth on *my* part to be done and performed." Now, independently of this studied "*my* part," Mr. Tudor was perfectly aware that it was not a "*bond*" that was requisite, but a *mortgage*,—a mortgage on real estate, free from all incumbrance, to the value of the penalty (\$4,000) and one half more. Knowing this, as Mr. Tudor did, how could he, if he had executed this power in good faith, and really intending that it should enable me to conclude the contract in our joint names, have so slurred over this vitally important part of the business? In his letter, too,—no

(i) See preceding § 8. — It is to be observed that the ground then taken by him was, *not* that I had *ceased to be* his partner, in consequence of having forfeited (as he had previously undertaken to pronounce) my share of the property, but that I *never had been* his partner. Once admit, that, by the transaction between us, in January, 1834, I had become his partner, and his cause was gone; the letter of the law was too express and plain for a word to be said in support of his pretension to deprive me of the management. He must either retire from the contest or assert that he never had considered me, that I never had been, his "*partner*." This assertion he made!

For the *express* acknowledgments in the face of which it was made, see his letters of August, 1830, in Appendix, (E.)

mention of it. No specific mention, indeed, of *anything*. A few vague words,—“You have not said anything respecting the new contract which makes it objectionable,”—and that was all! Was this the manner in which to transact business of such importance, particularly after all the difficulties in which we had been involved in consequence of the doubtful meaning, or pretended doubtful meaning, of formal documents drawn up by his hand?

I showed the Power to some friends, and it struck them in the same light. However, I determined to be governed by the opinion and advice of my lawyer,—that same *Don Jose Augustin Govantes*, already mentioned as standing at the head of his profession, for probity no less than ability, and for his attachment to equity and substantial justice, as contra-distinguished from the technicalities of law. I took it to him. He read it, and then said, “a very good Power—for *Mr. Tudor*. Everything that you do for *him*, within the limits of the authority it conveys, will be very well done. But you must take care that anything you do for *him* and in *his* name, is not associated with anything done for *yourself* and in *your* name; for this will be good for nothing.” He then stated to me more at length, that, according to Spanish law, and he supposed the law of every country, an attorney must confine himself strictly to the *letter* of the Power under which he acted; that if he stepped beyond this, it was at his peril, for his constituent was not bound, and *he* became individually responsible to him and to all persons affected by his acts. That, in the present instance, if under this Power I executed the contract in our joint names, and Mr. Tudor should hereafter see fit to deny my right to do so, a bare inspection of his Power would suffice to substantiate the denial, and to preclude all controversy upon the subject; none of their tribunals would hesitate to decide that the contract was good and valid so far as it regarded *him*, and good for nothing so far as regarded *me*, except so far as I *had made myself liable* by my own act. In a word, that the contract would be *his*, and his exclusively; and that if I set up a claim to be associated with him, as joint owner thereof, by purchase, I should be thrown back upon my old proofs—the sale of 1824, &c.; and this, under all the disadvantages arising from this new act of my own, which would probably be fatal.

This opinion decided me, and Mr. Tudor's letter was immediately replied to:

July 21, 1838. “Your letter of the 22d ulto., with accounts, was received the 19th inst. I had hoped that you would have remitted me a copy of Davenport's account of disbursements and sales for the time he was in the ice-house; I can certainly see

no just reason why I should not have it, item for item. I could then inform you of the errors in it, (if there be any,) and point them out to you, that you could have them corrected. I could have done it here, if you had remitted it to me when I first asked it of you. The accounts you have now remitted me, I *cannot accept*. I have compared these with those you remitted last year; and, so far as I can see, (without a copy of Davenport's account,) they *are still more erroneous* than those of last year. The interest account you have remitted me, is altogether a new thing, (*j*) and I cannot agree to it. If you have any funds here, they are at your disposal as soon as we can come to a settlement and ascertain how much they are; and this we can soon do, if you will remit Davenport's accounts, as I have often requested, for I have no use for your money at present, and therefore cannot think of paying interest on that which I do not use. My commissions for the time Davenport was in the ice-house, together with my one fifth interest in the ice establishment, I *cannot give up*, notwithstanding the threat you make in the third paragraph of your letter of the 22d ulto. I do not consider you are making concessions; to the contrary, I think you are increasing your pretensions; but I *do think* that I made concession when I said, *for peace*, I would consent that Davenport's wages might be made a general charge to the ice-house. I am of the same opinion now, that I was when you wrote me on the 1st of December last; and I should have gone to the north at that time only for the reasons mentioned in my letter of the 3d of December.

"I would really be glad for you to come here the coming winter, and I wish you had come here instead of sending Mr. Bacon; our affairs, I think, would have been long since settled.

"As, notwithstanding what I have written you, at several times, respecting the new contract I have made with the Cabil-do, you have not accepted the offer which I made of your being a partner in it, which I believe, and the literal tenor of the Power of Attorney you sent me proves it; I therefore proceed definitively to execute the escritura (deed) in my own name; (*k*) and this notwithstanding, when you come to Havana (as you tell me you shall next winter) we can then make such contracts and stipulations as may to us appear just, for to terminate our differences."

(*j*) See his letter of December 16, 1837. — In pursuance of the law therein enacted by him, he had kept an interest account at the rate of twelve per cent. In the settlement which took place a few months subsequently, between his agent and myself, this law was *nullified*, together with the rest of his code.

(*k*) This was done on the 23d of August.

In writing to a friend some days after, I send him a copy of Mr. Tudor's letter, and remark upon it:

"You see what he says about my ten per cent., and one fifth interest. It seems as if he thinks the world was made for him alone; but I think that others have some rights as well as he."

Nevertheless, it was still my intention, should he, on his announced visit to Havana, appear disposed to return to the ways of good faith, to admit him to a participation in the contract, on the footing first proposed to him. To say nothing of the many other reasons against keeping the business any longer in suspense, self preservation had required that I should close it, as the only way to secure myself against his wiles and stratagems. But these being secured against, I had no desire to exclude him. The idea was still repugnant to me; but this repugnancy, he himself compelled me to overcome, by pursuing a course which confirmed, in the strongest manner, the very worst construction that could be put upon the mode in which he had framed his reply to my inquiry, when finally extorted from him. The preceding letter was answered by the following:

Sept. 12. "I am in receipt of your favors of the 11th and 21st July, and I shall take time to consider my answer, which I shall make with the aid and advice of some of my most confiding and particular friends."

Oct. 6. "As I wrote you on the 12th ulto., I have consulted with my friends, Robert H. Gardiner, and William Savage, on the subject of differences between us, *in regard to our accounts*; and in accordance with their advice, I am induced to make one more attempt at amicable settlement. For this purpose, to avoid the possibility of feeling entering into the negotiation were I personally to undertake the business, I have engaged the services of J. W. Fenno, Esq., who, I suppose, can look coolly and impartially (*l*) into the business, to proceed to Havana, and endeavor to accommodate our troubles.

"I shall give him full power to *adjust all outstanding accounts*, as he may think proper; and give him one positive instruction, which is, that his stay in Havana shall not exceed ten days at farthest."

It will not escape observation, how guardedly silent he is *on the subject of the contract*. Not only is he silent on this subject, but he is particularly careful to exclude all possible implication of a reference to it, by particularizing the subject of his consultation and his letter, as the "differences between us in regard to *our accounts*." And again, "to adjust all *outstanding accounts*."

(*l*) "Impartially!" Most reasonable supposition.

Now, if in truth,—as has been since contended,—Mr. Tudor's letter and Power of Attorney had not been designed as a trap; had he acted on that occasion in good faith; had that document been transmitted to me in the *bonâ fide* intention, that it should enable me to conclude the business of the contract, by placing it upon the footing indicated by my first letter on the subject,—that is to say, securing to him the share of four fifths, and securing to *me*, beyond the possibility of future controversy, my share of one fifth;—had this been the state of the case, what course would he have adopted on receipt of my reply? Suppose, even that his Power of Attorney had been unexceptionable, and my lawyer's objections to it had been altogether futile; still, what is the course that would naturally be adopted in such a case, by any man conscious of having acted in good faith, and entertaining a sincere disposition, that the business should be placed upon the footing proposed by me?

Could any such man have hesitated an instant in setting me right as to his intentions, and as to the character of the document transmitted to me? Would he have lost a moment in informing me that the belief which I had expressed, as to his *not having accepted my offer*, was an erroneous belief; and that I was altogether mistaken in supposing that *proof* of such intention on his part, was afforded by "the literal tenor of the Power of Attorney," he had sent me? And, whether the document was or was not justly liable to any exceptions, would he not have transmitted one so framed as to preclude all doubt or question in regard to the intention that the business of the contract should be placed upon such a footing, as to secure absolutely to him, and to me, our respective shares therein?

At first, Mr. Tudor intended to come to Havana, and this might be a sufficient reason for postponing all further steps in regard to our affairs, until he should meet me face to face. But, so soon as he gave up this design, and determined to despatch a representative, what conceivable motive—consistent with the supposition of good faith on his part—could he have for delaying to correct my asserted belief, if erroneous? Does not his course, down to the 6th of October, already afford a sufficient corroboration of the grounds of that belief? If not, let us see what comes next.

On the 14th of November, Mr. James W. Fenno arrived at Havana, (*m*) bearing the following letter from Mr. Tudor:

(*m*) He had previously addressed to me the following:
 Oct. 9, 1838. "At the request of F. Tudor, Esq., and also in consequence of the solicitations of William Savage, and Robert H. Gardiner, Esqs., I have consented to make a voyage to Havana, for the purpose of endeavoring to arrange the points

Nov. 1. "This will be handed you by Mr. Fenno, who has full power to settle all matters in dispute between us, and all business past, present, and to come.

"I also authorize Mr. Fenno, to give you a release of the suit now pending against you here, in case a settlement of accounts is made."

Mr. Fenno produced also his Power of Attorney, wherein, among other clauses, stood the following:

"Also, I authorize and empower the said Fenno, to negotiate with any person or persons whomsoever, or with any bodies politic, or bodies corporate, having authority to contract for supplying the City of Havana with ice, and for me, and in my name, to contract with such persons, or with such bodies politic, or bodies corporate, for the purpose of supplying the said City of Havana with ice, for any term of time which said Fenno may deem proper. And, I further authorize and empower the said Fenno, if he shall see fit so to do, to join John W. Damon with me in the said contract, so that the said Damon shall be proprietor of one fifth part of the said contract, and entitled to one fifth part of the benefits thereof. And, I further authorize and empower the said Fenno, for me, and in my name, or in my name jointly with the said Damon, to sign, seal, execute, acknowledge, and deliver any and all bond or bonds, for any penal sum which may be thought proper to secure the performance of such contract."

Here, then, was the proof, under Mr. Tudor's hand and seal, of the virtue attached by himself to the document which he had transmitted to me in June! And here, likewise, was the proof, that Mr. Tudor understood the difference between empowering an attorney to do an act "for me, and in my name," and empowering him to do the same act "in my name *jointly* with the said Damon." Here was the proof, in regard to what he had "all along" been inwardly intent upon; even at the moment when he had despatched to me his power to execute

in controversy, between Mr. Tudor and yourself. I shall probably sail from here about the 1st Nov., next; and I wish to give you this early notice of my coming, that you may consider, before my arrival, on the means of arranging your difficulties, and, because my engagements here render it absolutely indispensable, that my stay in Havana should be very short.

"My mission is entirely of a peaceful character. I refrain from entering at present on the discussion of the disputed topics, preferring to leave them to conversation in Havana. But I do most earnestly request, that you will prepare yourself to meet me, with a desire to settle all differences in a just and amicable way. In cases of disputed accounts, you well know, that settlements are not easily effected, unless the parties come together with liberal feelings, and a desire to make peace. I shall come with these feelings, and this desire, and, if you will see me in the same spirit, I shall hope, before I leave Havana, to arrange every matter in dispute, so that the business may once more be started with mutual advantage."

the contract "for me and in my name," leaving it to me, if I should see fit so to do, to catch myself in the snare, by executing that contract "in my name jointly with the said Damon."

Mr. Tudor, it now appeared, was to obtain, if possible, the contract for himself alone, to the utter exclusion of J. W. Damon. But should he fail in this, then his attorney was empowered, "if *he* shall see fit so to do, to join J. W. Damon with me in the said contract." In other words, should Mr. Fenno ascertain to his satisfaction, that all the "influence" and machinations, which Mr. Tudor had brought to bear upon the subject, were without effect, then, and in that case, Mr. Fenno might, in Mr. Tudor's name, give his consent to that arrangement which Mr. Tudor had feigned to agree to in June preceding!

Mr. Tudor was here, — without being much aware of it, perhaps, — playing with double-edged tools; and, as is not unusual on such occasions, he cut his own fingers. Not only did he conclusively prove, to the satisfaction of my mind, that he had been acting towards me in ill-faith, and that his June movement had been a mere trick, but he effectually debarred himself from *ever asserting*, — excepting in the face of conclusive proof to the contrary, — *that he HAD GIVEN the consent on which depended his right to participate in the contract* entered into by me. Had he given that consent, it must, the instant it was given, have become irrevocable, for it would have had the effect of consummating a contract, to which we were parties, — a contract binding me to recognize and treat him as owner of four fifths of the Privilege, and binding him to recognize and treat me as owner of the remaining part. Had he given his consent, I must have become irrevocably bound by it; and if so, he could not but be bound in the same degree. This is too plain for argument. And, how is the idea, that he ever had entered into any such obligation, to be reconciled with the fact now before us? I mean the fact of his having, — on the 29th of October, 1838, the date of his Power to Fenno, — left it optional with his attorney, to join me with him in the contract, or not, according as *he* should see fit?

It is true, that I had considered his consent as *denied*; and, in consequence of so doing, I had judged fit to close the contract in my own name; the only way in which, — without clear and indubitable authority from him, to do otherwise, — it was possible for me to close it. But, by my letter, advising him of my having closed it, the door was still left open to him; all he had to do, was, to inform me that I had been mistaken in regard to his intention, and transmit a Power, which would enable me to make his acceptance effectual. Moreover, *had his consent*

been in truth given, my act in closing the contract in my own name, could not have the effect of destroying or weakening the right, which I had myself secured to him on the condition of his consent. If that consent had in truth been given by the June letter, and the Power accompanying it, then the condition on his part, had been fulfilled; and from that moment, we had both been mutually bound,—he to me, and I to him. If his Power had, in truth, been a sufficient one for me to act under, and close the contract with the Cabildo *in our joint names*, then, all he had to do, was to assume this position, and make it good; for then, my own previous act,—my recorded memorial,—made it irrevocably binding upon me.

Instead of adopting this course, he adopts that of endeavoring to have my contract annulled, and to obtain one for himself, to my exclusion; and should he fail in this, then it is left at the discretion of his attorney, to become a party to a contract with the Cabildo, in which I should be admitted for a share. Of course, he could not consider himself already bound to me, in the way in which he must have been bound, *had his consent been given*. And even supposing that his consent had, in truth, been given in June, here was an act, under his hand and seal, bearing date October 29th, which amounted to a revocation of that consent. Under whatever aspect the question be considered, it is, therefore, perfectly manifest, that *he had not bound himself* to me; and consequently, that *I could not be bound* to him. Agreeably to the terms of my memorial to the Cabildo,—which constituted the only conceivable title he could have to a share in the contract,—his right to participate in the Privilege, *dependent upon his acceptance* of the share thereby secured to him. That acceptance was *not given*. First, it was *withheld*; the offer from me remained for months without reply or notice of any sort; and when, at length, a reply was extorted from him, it was of a nature to make it impossible for me to consider it as an acceptance. And finally, it was *refused*, by an act,—the Power to Fenno,—under his hand and seal, now recorded in Havana.

On perusing this refusal, attended as it was by every possible indication of ill-faith which the nature of the case admitted of, my intention in regard to Mr. Tudor became changed. Down to that moment, my determination had been, should he pursue a tolerably fair course, to admit him to a participation in the contract, on the terms set forth in my memorial. I now resolved, that, as he had persisted in his sinister mode of refusing to bind himself to them, it should no longer be at his option to do so. As I,—so far as it lay in Mr. Tudor's power to render me so,—

was to be dependent for any share in the ice business, upon what Mr. James W. Fenno might "see fit" to do, I determined that, — so far as it lay in my power, — Mr. Tudor should be dependent for any share which he should have in my contract, upon my sense of, — not *his* deserts, for then, he would have had none whatever, but, — what was due to my own feelings, and my own ideas of liberality in the position wherein we were now respectively placed, as the result of a fifteen years' association.

What steps Mr. Tudor had been taking previously to the arrival of Mr. Fenno, to get my contract with the Cabildo set aside, I, of course, cannot tell. I am equally incompetent, to say what steps were taken on the subject, by the latter. He had not been long at Havana, however, before he ascertained, to his satisfaction, — so far, as one may be allowed to judge from circumstantial evidence, — that this was a point not so easily carried as Mr. Tudor had flattered himself. Accordingly, — the contingency having occurred, in which he was to "see fit so to do," — Mr. Fenno did "see fit" to propose to me, to concur in the contemplated measure, so that a new contract might be executed in the name of Mr. Tudor! I need scarcely say, that I declined availing myself of this condescension. Had no other reason existed to forbid, my lawyer, perhaps, might have suggested, that, inasmuch as my contract must be surrendered and annulled, before Mr. Tudor's proposal could be entertained by the Cabildo; and, supposing it accepted, and all possible diligence used, a month or more must elapse, before the formalities and public notices prescribed by law could be complied with, and the subject be ripe for the final execution of the new contract, — it might *possibly*, so happen, that when it should come to the execution of the new contract, Mr. Fenno might "see fit," *not* "to join J. W. Damon with" Mr. Frederic Tudor "in said contract." This possibility did not even *necessarily* imply ill-faith on the part of Mr. Fenno, for his constituent might have become dissatisfied with him, and have revoked his power, to "see fit so to do." That it did imply ill-faith *somewhere*, was pretty clear; but, whether greater ill-faith than the reader has already seen specimens of, — and he is presently to see another, — the reader may be left to judge.

This proposal from Mr. Fenno, gave rise to a letter from him, which I will now produce. It will be seen to involve a question between my veracity, or my accuracy of recollection, and the veracity or the accuracy of recollection of Mr. Fenno. To compensate for any disadvantage, which the word of "a poor miserable carpenter" may, perhaps, labor under, when weighed against the word of a gentleman of education, honored with the

confidence of Mr. Tudor, I may be allowed to point to the fact, (perhaps, lost sight of by him,) that his proposal, agreeably to *my* version of it, *corresponds with the letter of the Power of Attorney*, under which he had acted. So far as we possess any indication of the course *prescribed* to Fenno, and so far as the course prescribed to him may be considered as affording a presumption as to the course *pursued* by him, the presumption clearly is, that the course actually pursued by him (after making up his mind to "see fit" to admit me into the business) was, to endeavor to put the subject on the basis of a *new contract*, wherein Mr. Tudor should be the principal, and Mr. Damon should be joined therein; and not to endeavor to have Mr. Tudor *admitted* into the existing contract of J. W. Damon. A glance at the Power suffices to show, that if Mr. Fenno did not make such endeavor, he was guilty of a gross departure from the obvious intention of his constituent.

"BOSTON, Jan. 1, 1839.

"MR. JOHN W. DAMON,

"Dear Sir: I have just arrived here, after a tedious journey, and Mr. Tudor has shown me your letter of Dec. 1, last, in which you state 'Mr. Fenno wished me to make a memorial to the Cabildo, and ask that body to annul the contract I had made with it, and I told him I should not do any such thing, and he has finally gone without doing anything about it.' As you have, in the above quotation from your letter, (no doubt unintentionally,) mis-stated our conversation, I improve this opportunity to set that matter right. I asked you to make a memorial to the Cabildo, requesting them so to alter the contract as to place four fifths in Mr. Tudor's name and one fifth in your own; to which you replied that you should not do it 'until the accounts were settled.' (n) After the settlement of the accounts I again adverted

(n) Agreeably to this passage in Mr. F.'s version of the matter, I used subterfuge and deception, in order to obtain a settlement of accounts. Upon this point, I will leave it to the reader to judge of the relative probability of our respective statements. Besides the ground for a judgment afforded by the manner in which this part of Mr. F.'s version connects itself with the averment which he sets out with in regard to the nature of his proposal to me, the reader is in possession of others. Among these may be mentioned the knowledge which, by this time, he must have acquired of my character, and of the extent to which it involves a proneness to subterfuge. Another is, the possible motive which I could, on this occasion, have for resorting to such means for such an end.

It is true that I was, and had long been, very desirous that the accounts between Mr. Tudor and myself should be settled. It was, on every account, extremely unpleasant to me that they should remain unsettled; and one of the many reasons was, that I did not like, — either on Mr. Tudor's account or my own, — that his money, which by this time had swelled to a considerable amount, should be lying in my hands, at my risk and responsibility, and dead to him; for, as I made no use of it, — a rule which I had never deviated from, — I was determined never to allow

to the subject of the contract, when, after more solicitation than I thought would be necessary to get your views, you claimed one half of the contract, (o) and that Mr. Tudor should cede to you three tenths of the ice-house; to this I thought I should act properly to reply, as I did, that Mr. Tudor would not agree to it. Having now said all I intended in regard to this matter, I add a few words on my own account.

"Contrary to my inclination, and in the hope that, by making concessions in matters of account, and explaining to you in a full manner that Mr. Tudor had no intention of trenching in any manner upon what even you considered the extent of your rights, (p) I should be able to set all things right, and that peace

him one cent of interest upon it. But, although I was really anxious for a settlement of accounts, this, for the reason just stated, was not a matter of absolutely vital importance to me. My position *now* was the reverse of what it had been on former occasions of the same nature; and particularly in 1826, [See Appendix (G.)] when Mr. Tudor considered it indispensable to a settlement of accounts, that I should be corporally present in Boston. On these occasions *he* was on the safe side; my money was in his hands. On the present occasion, this advantage was *mine*, and although I was nowise disposed to imitate him in the use of it, it was inseparable from its nature that it should operate in the way of allaying my anxiety for a settlement, so far at least as to prevent its rising to fever heat.

On the other hand, — considering that the adjusting and settling of all matters of accounts stood at the head of the list of functions to be discharged by him; and that the receipt of a pretty handsome sum of money awaited its discharge, — it is obvious that the position of Mr. Fenno at Havana, was not of a nature to create an absolute necessity for a resort on my part to seductive baits, in order to allure him into entering upon the business of a settlement of accounts. In addition to these considerations, it may be remarked, that his position at Boston, on his return from Havana, may possibly have been of a nature somewhat to excite his imagination in regard to the incidents of his mission. Mr. Tudor may have proved, — not a very rare phenomenon, — somewhat annoyed and irritated at the result; and in his sympathy with this state of irritation, Mr. Fenno may have fancied that this result had been arrived at by the process best calculated to excuse him in the eyes of his employer. To render him this service the chief effort his fancy had to make was, to transpose the words "until we have settled our accounts," and give them the connection in which he places them, instead of that belonging to them as uttered by me.

(o) "Claimed one half of the contract!" Here, unless I greatly mistake, the reader will experience but little difficulty in arriving at a satisfactory state of mind respecting the relative probability of the two conflicting versions. Mine, I flatter myself, will be seen at a glance to harmonize perfectly with the *exact state of the case* at that moment; whilst the conflict between it and that of Mr. F., at this particular point, will be seen to be, although a very material one, yet also one that might very naturally have occurred, without any other cause on his part to produce it than a degree of vagueness of apprehension and recollection, which is witnessed every day.

(p) No intention of trenching in *any* manner upon what even *you* considered the extent of your rights!" And this was all explained to me "in a full manner." Let the reader only suppose himself to have been the pupil of Mr. James W. Fenno in this branch of science; and then try to imagine how far Mr. F.'s lectures on the subject could have enlightened his ignorance in regard to my patron's "intention," and every other branch of his "just generosity."

"*No intention!*" Let it be borne in mind that this is said to *me*, — that it is uttered to *my face*; and that the person who utters it is Mr. Tudor's man of business, *writing under his eye*. Let this be adverted to, and then some idea may be formed

and harmony might be once more restored between you and him. (g) With this view I met you. I made concessions in the account which I believe Mr. Tudor never would have made; and tried by all the means in my power to induce good feeling on your part towards Mr. Tudor, and had it not been for an increase of interest in the business which was demanded by you, and which I did not anticipate, I think everything would have been adjusted, and peace once more restored. But now, from the proposition which Col. Hobbs has made to Mr. Tudor, it seems that all my exertions have availed nothing, and that you are determined to war with Mr. Tudor until you ruin his business in Havana, or fail in the attempt. From the whole course of my conduct and conversation in Havana you will know that I cannot but feel deep regret at the course you see fit to adopt, and I cannot forbear to express the hope that you will, upon further consideration, come back to the acceptance of those terms in regard to the business which you have heretofore enjoyed."

In reply to this letter, the following was immediately written by me. Upon full reflection, however, it seemed decidedly advisable that I should not allow myself to be drawn into a correspondence, from which I could gain nothing but the trouble attending it; and therefore my letter was not sent. It appeared quite possible, that an attempt, on the part of "a poor miserable carpenter," to chop logic with a gentleman of Mr. F.'s qualifications, might result in furnishing him with specious grounds for the quirks and quibbles of the law; and notwithstanding the assurance I had from Mr. Tudor, of Mr. Fenno's strict impartiality between us, it seemed the part of prudence not to put this virtue in him, to any unnecessary trial. But although not sent then, my reply shall now be given, because it gives a *true* account,—as I flatter myself that the reader will see there is not much room to doubt,—of what had passed between us.

of the assurances, or assurance, on the part of Mr. Tudor, in regard to a subject which the public heretofore have had no means of judging of except from *that* "gentleman's word."

(g) If the reader, on arriving at the end of this sentence, knows what it means, 't is more than I can pretend to. If he thinks it worth while to turn back, and take a fresh start with "contrary to my inclination," he will, if I mistake not, find himself as much puzzled as I was on first perusing this letter, to know what *thing* was contrary to the inclination of the writer.

Query: Is this the way that gentlemen of education write, when intrusted with the management of a business that admits of an honest, open, straight forward course; and of honest, open, straight forward talk? So far as "a poor miserable carpenter" may be allowed to have an opinion on such handiwork, this letter of Mr. F., from beginning to end, affords no bad idea of the cause in which he was engaged.

"HAVANA, Feb. 8, 1839.

"MR. JAMES W. FENNO.

"Sir: Your letter of 1st ulto. per Jacob Perkins came to hand this day and I have noted its contents.

"I have no recollection of such conversation passing between you and me as this, which I take from your letter above mentioned. 'I asked you to make a memorial to the Cabildo request them so to alter the contract as to place four fifths in Mr. Tudor's name and one fifth in your own;' but I have a perfect recollection of being seated, one warm Sunday, by the door which looks out to the sea, when you came in from the street and sat near me and commenced conversation as follows:

"*Fenno.* 'I was told in Boston, and I have been told since I arrived here, that the contract you have made with the Government can be annulled.'

"*Answer.* 'Ah! well, perhaps it may.'

"*Fenno.* 'Yes, by presenting a petition, or memorial, as it is called here, to the Cabildo; and they will annul it.'

"*Answer.* 'Who is to present this petition or memorial?'

"*Fenno.* 'Oh, you must do that; and then I will present for one.'

"*Answer.* 'I shall do no such thing; and I wish you would say no more about the contract until we have settled our accounts.'

"You left me immediately, and I have no recollection of any conversation respecting the contract until the evening of the last night you stopped with me, when you commenced again by saying that I had been very close and dark respecting the contract, during the settlement of accounts, but as I had promised to give you my views of it after we had come to a settlement of accounts, you wished for them; and I told you that my idea was, that I should send to Boston to treat with Mr. Tudor, and offer him one half of the contract, in consideration of three tenths of the ice-house, and then we should be equally concerned; to which you replied that 'Mr. Tudor would do no such thing until after he had tried his strength.'

"If you have made me greater concessions in matters of account than Mr. Tudor would, I have made greater concessions to you than I should have made to Mr. Tudor; so I believe we are not far from being square on this last point."

From these letters it is seen what determination I had come to in regard to the terms on which I might be associated with Mr. Tudor, after the expiration of the existing Privilege. That determination was, not,—as Mr. Fenno represents it,—to de-

mand "an increase of interest in the business," but, to *offer* to Mr. Tudor one half of *my* contract with the Cabildo,—that contract which, *by the laws of Spain*, was *MINE*, and which, so far as *LAW* can be relied upon to secure anything to any person, was secured to me beyond the possibility of doubt or question. The Privilege which had been obtained by me in 1830, for Mr. Tudor and myself jointly, — and which, through my confidence in his good faith, had been put in his name solely, — was now about to expire; and with it would *necessarily* expire the association entered into by us in 1824; for that association, whatever might be the construction put upon its terms, could not but cease so soon as he might, from any cause, cease to have it in his power to continue to import and vend ice at Havana; and the exclusive Privilege having been granted to another, — it mattered not whether the grant was to me or to a third party, — his ability to import or to vend ice at Havana would necessarily terminate with the year 1838.

In this state of facts, connecting with it the course recently pursued by Mr. Tudor, I had come to the determination never again to be associated with him, except on terms of *absolute equality*, which should secure me from the wanton oppression, the gross injustice, and the shocking ill faith, under which I had been suffering for fifteen years. I should have preferred infinitely not to be associated with him at all; but this feeling, strong as it was, and strong as the reader knows the grounds for it to have been, was effectually countervailed by that which prompted me not to prove vindictive and overbearing, in the use of the advantage over him which he had forced me to acquire, but on the contrary, to overlook all his misconduct and to act towards him with all the liberality consistent with the most moderate regard for my own rights and well being.

As to "the business," — in the only sense in which I could have anything to ask of Mr. Tudor, or to receive from him, — I *cared nothing about it*; not a single straw. I mean the part of the business which had been heretofore managed by him, and which consisted in providing the ice and shipping it to Havana. He had "all along" endeavored to impress me with the belief that in *his* management of this branch of the matter lay the secret of all prosperity; that it was by far the most difficult part of our business; one, before the difficulties of which all those with which I had to contend were trivial and insignificant. But, whatever might have been the efficacy of his genius in the ice-field, it had been expended in vain in the endeavor to inculcate his theory as to its paramount importance. I had a stubborn Yankee notion, that he was not the only man in all New Eng-

land capable of providing and shipping ice; but that, on the contrary, there might be others by whom it could be supplied on terms *at least as good* as those charged by him against the Havana establishment; and this, even without reckoning that item [Sec Appendix (D)] which in one of his letters (*r*) he called "my own charge of \$500." At any rate, I was so perfectly content to incur the risk of ruin on this score, that I cared not one straw about having the advantage of Mr. Tudor's "business," in the only sense in which my *offer* to him could be considered as a *demand* "for an increase of interest" therein.

The offer which I proposed to make to Mr. Tudor, is seen to have been to give him *one half* of my contract in exchange for *three tenths* of the house. In terms, this would have been to *sell* to him a share in the contract. Viewing the whole subject under the light of *equity*, it would, however, have been a *free gift* from me; for, to say nothing of all the other facts connected with the building of that house, the reader is aware that the one fifth of it now owned by me (although this ownership even had been denied, and still was denied by Mr. Tudor) had been *erected at my cost*; whereas, agreeably to Mr. Tudor's solemn pledge, at the time when he had induced me to become his partner, the house was to be built at *his cost solely*. Now, the amount of *my* money which had been sunk in the house, contrary to his en-

(*r*) In his letter of Jan. 14, 1829, he had said:

"The accounts for the year are picking up. The charges against Havana have now got up to \$2432, without my own charge of \$500. I say the accounts are 'picking up,' which expression is descriptive of the difficulties attending an approach to accuracy, in a business attended with such a variety of active operations, to procure ice at all. There were operations at Fresh Pond, through the ice and through the mud. Large masses of ice collected in nooks of the pond, were afterwards brought to the ice-house, in a canal boat. Ice was collected in the same way, but without a boat, at West Cambridge pond," &c. &c. &c.

On the subject of his accounts, see Appendix (D.) What the "mud," and the "nooks," and the "in a boat," and "without a boat," could have to do with "an approach to accuracy" *in accounts*, was past my comprehension at that day, and remains so to the present. In the ignorance proper to "a poor miserable carpenter," I have always, since I got the little learning my parents could afford to give me, supposed that matters of account, depended, not upon the properties of mud and nooks, and canal boats, but upon those of *numbers*; and that, to ensure, — I don't say "an approach to accuracy," but — absolute accuracy in an account, nothing was requisite but the application of the rules of arithmetic.

Had Mr. Tudor been intent upon making against the Havana establishment, a fair charge of the *exact cost* of the ice supplied to it, it strikes me that the mud, &c. &c. could not have presented any very great "difficulties." So many cords or tons laid in, at such cost for the whole; of the supply so laid in, such a part sold, such a part shipped to New Orleans, such a part to Calcutta, &c. &c., and such a part to Havana; and at the end of the year, so much remaining on hand. Distribute the aggregate cost accordingly, and charge against each establishment, the part of said aggregate cost corresponding to the quantity of ice shipped to it. Then add the expenses of shipping said quantity, and the thing is done. The operation strikes me as an exceedingly transparent one, all the "mud" in Fresh Pond to the contrary notwithstanding.

gagement, would, together with interest to the time being, have considerably exceeded *three tenths* of the whole cost of the house. In this point of view, therefore, Mr. Tudor, by giving me what I proposed to ask in exchange for one half of my contract, would have done nothing more than restore to me, in part, what was justly mine, and what no just man would ever have withheld.

This offer would have been made (s) to Mr. Tudor, but for the intimations respecting his views and designs, which I gathered from the last remarks made by Mr. Fenno, a minister, who could scarcely be otherwise than fully possessed of all state secrets. These occasioned a change in my determination, the nature of which is seen from the following letters to Mr. Tudor, and to a friend in Boston — Col. Hobbs.

Dec. 1, 1838. "During the time Mr. Fenno was here, we settled all our accounts, up to the 31st October, inclusive; and he has taken the balance, and given me a receipt. Mr. Fenno wished me to make a memorial to the Cabildo, and ask that body to annul the contract I had made with it. I told him, I should not do any such thing; and he has finally gone without doing anything about it; it is true, we had some talk on the subject of the new contract; but our views not coinciding, there was nothing done. I propose sending to Boston, in a few days, my *special Power*, to treat with you respecting the Havana ice-house. Following, is the account made up for November." (t)

Dec. 4, 1838. "I have this day revoked all my previous powers conferred on you, and have at the same time, conferred on you my *special power*, to negotiate, and treat with, and purchase

(s) On the 26th Nov., I wrote my friend in Boston, by the *Elizabeth*, which sailed on the morning of the 28th:

"I shall write you again in a few days, and send my propositions to Mr. Tudor, with instructions to you, how to treat with him. I propose now to let Mr. Tudor have half the contract, if he will let me have three tenths more of the ice-house, when we shall be *equally* concerned. If he does not accept this, I shall keep the whole."

(t) It will be recollected, [See § 6.] that the conditions upon which the Government had permitted the erection of the house, rendered it impossible that it should be used for any other purpose, than an ice-house. Of course, it could not be used for this purpose by any one, except the holder of the exclusive Privilege to import and vend ice, to wit: myself. And it was not to be supposed, that the authorities would allow it to stand there unoccupied, until it should rot down. It was perfectly obvious to every one, that, for various cogent reasons, this would not be permitted; and that, unless used by me, an order for its demolition would immediately issue.

This obvious view of the subject, was the ground on which I said, "the house will unavoidably be pulled down." That ground was *not*, as has been intimated, with reference to the order for its demolition, which subsequently issued, whilst the house was still in my occupancy, that I counted upon the efficacy of my intrigues, to *procure an order* for its demolition. How this order came to issue, will be seen in the proper place.

of Mr. Frederic Tudor, his four fifths interest in the Havana ice-house, at cost,—that is to say, \$13,600. As I have obtained from the city authorities, the exclusive Privilege for the importation of ice into this city, for the term of ten years, counting from the first of January, 1839, I am disposed to make Mr. Tudor this offer, to prevent any hard thoughts on his part towards me; for he is well aware of the conditions under which this present house was built, and should he not be disposed to accept this offer, the house will unavoidably be pulled down. (u) I want his answer immediately; for, in case he does not accept of my offer, I shall occupy the lot of land which has been offered me for building an ice-house, under very favorable circumstances, and it will cost, probably, not more than one half of what I offer Mr. Tudor, for it has three sides of the walls built already."

I again wrote to the same friend, as follows:

Dec. 5, 1838. "I wrote you on the 26th ulto., that I was disposed to offer to Mr. Tudor one half of the new contract, in consideration of which, he would cede to me three tenths of the ice-house, which would then leave us equally interested. But on reflection, I have concluded not to make that offer; for I had some talk with Mr. Fenno, the last night he stopped with me, and I told him, I had an idea of making such an offer, when he

(u) This is the letter referred to in Mr. Fenno's, of Jan. 1, 1839. The conflict between our respective statements regarding the proposal he had made to me, has already been remarked upon. I will here add, that the reader being now acquainted with the *exact state of the case*, at the moment when I wrote the above letter, he can see, that it is difficult to imagine any possible motive I could have to misrepresent the nature of the proposal made to me by Mr. Fenno. I could gain nothing by so doing. Nor, had my determination rested upon the nature of his proposal. Had it been exactly as it was afterwards represented by him, it is perfectly evident that I should have refused to accede to it; for, my change of determination had already taken place, and I was already firmly resolved never again to be connected with Mr. Tudor, except on terms of absolute equality.

On the other hand, it is pretty clear, from the tone of Mr. Fenno's letter to me, that his constituent and partner, (for he had been admitted to a partnership in Mr. Tudor's affairs,) had been annoyed at his having made to me the proposal mentioned in my letter. To be sure, that was the very proposal which the Power under which he had acted, had plainly required him to make, and his constituent was absurdly self-contradictory, to find fault with his having "obeyed orders." But when was his constituent otherwise? On what single occasion, in the course of his life? In this state of the matter, his junior partner had a very substantial motive for averting his patron's wrath; and the readiest, if not the only mode, of doing so was, *not* to point to his instructions in self-vindication, but to remember what had passed between us, in the way best adapted to show that he had not been guilty of what Mr. Tudor now saw fit to look upon as a bungling diplomacy.

In a word, Mr. Fenno's letter renders it perfectly obvious, that his senior partner was dissatisfied, at his having made the proposal stated by me. And in this state of things they both lost sight of the *recorded* proof, under Mr. Tudor's hand and seal, that said proposal was the very one which his attorney had been instructed to make.

This little circumstance I had not,—as my letters of the time show,—myself, adverted to. It is but very recently that my attention has been called to it.

said Mr. Tudor would never consent to it, *without first trying his strength*. Now, if he is first going to try his strength, and when he finds he cannot have the whole, is going to come in for half, I think it is not fair. Therefore, if he intends to 'go the whole hog,' I will try the old sow and her litter; for it is very evident to me, — and I believe it is to you, since you have seen his letters, and the late Powers to me and to Mr. Fenno, — that his intention is, to squeeze me out if he can; but, if he cannot get me out entirely, he will cry 'quits,' and let me have one fifth. Now, this is what I do not like. If Tudor had not (in his June letter) again denied my right to the fifth interest, and my ten per cent. compensation, I should not have dreamed of closing the contract in my own name. It was purely in self-defence that I acted. Even now, by Fenno's conversation, they contemplate contesting my one fifth interest, and the right of my charging the ten per cent. for my services."

My letter closes by providing for the contingency that Mr. Tudor should see fit to offer to come into the contract on the terms which I had mentioned to Mr. Fenno my intention of proposing to him through Col. Hobbs, and which Mr. Fenno's remark had prevented me proposing. In that contingency, I authorize my friend to admit Mr. Tudor on those terms, should it appear to him proper so to do. "Of this, I leave it to you to judge. But let the offer come from Mr. Tudor; and then let the business be so arranged, that there be no chance for disputes hereafter, if possible; but I fear there can be no such thing."

Dec. 6. "There is a vessel bound for Boston, to-morrow, and I cannot let the opportunity pass, without dropping a few lines to request you to make all diligence with Mr. Tudor respecting the purchase, and let me know as soon as you can. If Mr. Tudor should be morose, and not give direct and definite answers, you must go forward and make arrangements for the shipping of ice to this place, the same as if you had never had anything to do with him; also have ice stored for summer cargoes; for the new house (if I have to build one) will not be large enough, this season, to hold a year's supply. I shall want some to arrive about the first of April, and then another supply some time in May, or first of June. Of this I will write in time; only be provided with a sufficient quantity, so that it can be sent when wanted. I fear Mr. Tudor will think this rather a hard operation, but he has no one to blame but himself; for you know, that when I was in Boston last, I expostulated with him; when he said *I had no interest in the ice business*; and that *he had taken his stand, and I might take mine*. I told Mr. Tudor, that I could not give up the idea of my having an interest in

the ice business, for I had paid him \$6,000 for it; and that I should not give it up without making a struggle, and if in this struggle his interests should suffer, he must never lay any blame to me. I believe my conduct to Mr. Tudor has been open, free and in nowise unjust. When he commenced the attack on me in 1835, I told him I would sell, and then he could do as he liked. He would not buy; for, said he '*you have nothing to sell.*' During all this warfare, he has tried to cast me out; and even in his Power of 20th Oct. last, to Mr. Fenno, he continued his intention of casting me out, for he thought of making a contract with the Government, and then, if Fenno thought fit (or saw fit) so to do, he was to admit me for one fifth interest."

Dec. 21. [To Mr. Tudor.] "In my letter of the first inst., I told you what Mr. Fenno wished me to do in regard to the new contract and my answer to him. I also wrote you that I should send my special Power to treat with you respecting the Havana ice-house. This I have done; and I suppose by this time the proposals have been made you for the purchase of your four fifths of the house. As the contract made with the Government of Havana, in 1830, expires on the 31st inst., and whatever quantity of ice there may be on hand at that time, four fifths of it belong to you, it is right and just that you should receive an equivalent for it; and I have thought that the most direct, as well as the quickest way to ascertain how much it should be is, to measure the ice on hand on the 31st inst. and ascertain, as near as possible, by comparing with former years, how long it will last, and then make an average of the sales, for two, three, or four years past, for the value of the ice on hand at the time of measurement, four fifths of which I propose to pay you, after deducting the current expenses, commissions, &c. If this should be agreed upon by you, you will please inform Mr. Hobbs of it, who is requested to give me immediate notice, and upon which I will forward you the amount."

Jan. 3, 1839. "The above is a copy of the Journal for the last eleven days of December, 1838, together with the sums of the two preceding copies forwarded. I will make up the accounts for the last month, in a day or two, and add November to it, when I will remit your part of the proceeds since the settlement with Mr. Fenno. As I wrote you on the 21st ulto. respecting the measuring of the ice which might be on hand on the 31st, the contract made with the Government in 1830 expiring on that day, &c., I did, on the 31st of December ulto., call in Mr. Theodore Phinney and Mr. Levi Fletcher, together with the Comissario of this Barrio; the two former, for examining and measuring the ice, the latter to certify the doings of the former. After

examining and measuring, they made the quantity on hand to be 5203 cubic feet," &c. &c. &c. "My opinion is that the difference in quantity between this year and last would be about equal for this year to hold out to the 1st of April next: making the present supply equal to three months, which supply, I will purchase at the average sales for the corresponding time of the last two years."

Whilst I was thus preparing to remit his money to him, the following letter from him was on its way to me:

Dec. 22, 1838. "I have this day drawn on you at five days sight, in favor of Messrs. DeConinck & Spalding, three bills: first, for what you admit is due me of the sales of Nov., and what I suppose (say the second bill) falls due me for the sales to the close of the year. The third bill is for \$1500, being the amount estimated to be due for the balance of the ice shipped the past season.

"I have requested Messrs. DeConinck & Spalding not to have the bills protested if you have remitted me since the 1st inst.; but if not, to proceed regularly if they are not accepted and paid according to their tenor.

"I earnestly request you not to have these bills dishonored; and in the course you adopt in this matter, I shall see whether there is any latent hope of ever being on good terms with you again, or whether there is to be nothing for the future but endless hostility.

"P. S. I wish you, if convenient, to pay the bills on presentation. (v) The first is for \$937.2; the second, for \$750; the third, \$1500."

(v) Not only does he draw "at five days sight," but he wishes that I pay the bills "on presentation." Why such desperate haste? I leave it to the reader to guess, after being informed that Mr. Tudor had just adopted the course of instituting a new suit against me, (and a new attachment on my property,) claiming damages to the amount of one hundred thousand dollars. It is on the very heel of this *amicable* proceeding that he despatches his bills, and does "earnestly request you not to have these bills dishonored; and in the course you adopt in this matter, I shall see whether there is any latent hope, of ever being on good terms with you again."

Query: could Mr. Tudor think it *possible* that his bills could be accepted and paid, *unless* this should be done *before* I got wind of his new step for getting "on good terms?" Any one who can believe it possible that such expectation could be entertained by him, can also believe it *possible* that his reason for drawing at short sight and making this whining appeal (sounding so much like a true note of distress) to my good feelings, was something else than the hope of *surprising* me before intelligence of his "war to the knife" movement should reach me.

This is one point in this good-faith transaction. And now for another:

It will be recollected, that, in my letter of April 1st, 1838, I had given him to understand that the money of his, then "in my trunk," or which might come there, should remain there until he should "have raised the interdict on my property and person;" in other words, discontinue his Boston suit and attachment.

Accordingly, when he despatched Mr. Fenno to Havana, he did not forget to inform me that Mr. Fenno was authorized "to give you a release of the suit now pending against you here, in case a settlement of accounts is made."

What reception I gave to these bills will be seen from the first of the following extracts from letters to my friend in Boston :

Jan. 7. "The above is a copy of a letter from Mr. Tudor, advising that he had drawn three bills on me to the amount of \$3187.2rs. These bills I have protested, stating in the protest that it is for just motives that support me in it. These just motives are, first, that Tudor has no such sum due him from here ; and secondly, that your letter informs me that Tudor has re-commenced a suit against me for \$100,000, and laid another attachment on my property in Summer street. Now, I think I am perfectly justified in protesting these bills, and in refusing to make any more remittances, of that which I may have on hand, or may come into my hands hereafter, so long as he continues to molest me with attachments."

"He could have no idea that I should be made acquainted with the new attachment until I had accepted his bills ; and your notice of it came just in time to save me.

"I expect, in a few days, to have letters giving an account of your negotiation with Mr. Tudor for the purchase of his part of the house. As he is going on, I think you will see the impropriety of coming to any arrangement (*w*) with him, for a continuance of our co-partnership. It is impossible for him to come to *any* just arrangement."

Jan. 12. "I was aware of Fenno's being a partner with Tudor. Fenno told it me himself, and said he should have the transacting of all the business hereafter, and there would be no doubt of our agreeing harmoniously, and much more of such kind of soft soap. But when he found I would not petition the Cabildo to annul my Contract, so that he might apply for it, he changed his tone, and said that Mr. Tudor would commence a suit against me, and it would go before an honest and impartial jury in Boston, and it would be likely they would call on him for declarations, and much more of a similar kind. These I

Well, the settlement was made ; and in consequence thereof, Mr. Fenno pocketed for Mr. Tudor, (his own commission included, whatever this may have been,) nearly *twenty-one thousand* dollars. He simultaneously executed a notarial deed, (without which, the money must still have remained in my trunk,) giving me the "release of the suit now pending against you here."

Of course, Mr. Tudor's "good faith," — to say nothing of the force of law, — would not allow him to do otherwise than proceed at Boston to withdraw his suit and raise the attachment. This was most scrupulously done by him. In the very same breath, — without so much as taking a turn in the Clerk's office, so far as I am informed, — he instituted a new suit, for five times the amount of the former, and attached my property again !

So much, then, did I gain by letting his \$20,824 pass from my trunk into his pocket ! If this be "good faith" in *law*, then must *law* indeed be, — as Mr. Tudor had long ago informed me it was, — "a very different thing from *equity*."

(*w*) See the close of my letter of Dec. 5.

took as menaces, and let them pass by without any reply. He went into a long history, to tell me that Mr. Tudor had once before been usurped of his Privilege, but he drove the usurper away and recovered his rights. To this I made no reply neither; but I *could* have told Mr. Fenno something about that *usurpation*, as he called it, which he knew nothing of. I believe I know as much about that affair as Mr. Tudor himself; and if I was with you two or three hours, I could give you an idea of it. Here, I will only say that Mr. Tudor had no more *rights* then, than he has now."

The mode in which my offer to purchase his part of the ice-house *at cost*, (though the building was now between seven and eight years old,) was treated by Mr. Tudor, will be seen from the following extracts from a letter of Col. Hobbs. His rejection of my offer was a very fortunate circumstance for me; for,—as will be seen presently,—had he accepted it, the amount paid him would have been a clear loss to me.

Jan. 4, 1839. "The following is a copy of my note to him to-day:

"Frederic Tudor, Esq.: I am constrained to say, unless my proposition be accepted before three o'clock to-day, I shall consider it as withdrawn, and notify my principal of that fact."

"Mr. Tudor says that he is willing to *guarantee* (x) to you the management of the business, as originally understood under the contract, waiving all claim to interfere with your ten per cent." — "Mr. Tudor denies ever having had an intention of taking away from you your one fifth. Mr. Fenno showed me some letters which he calculates to make use of in this case, to prove that you secretly applied to the Government of Havana for a contract in your own name, after you were re-instated under the decision at Principe. It may be necessary to rebut this with evidence.

"It is now past three o'clock, and I have no communication from Mr. Tudor. Therefore the business of purchasing the ice-house is at an end."

I will now give some extracts from my letters in reply to this, and to others which followed:

Feb. 9. "I have done no wrong to Mr. Tudor, but he has done an irreparable one to me; and now he tells you he is 'willing to guarantee to (me) the management of the business, as originally understood under the contract, waiving all claim to interfere with (my) ten per cent. I know the way he *understands* the 'constitution,' is, to 'instruct' me out, whenever he pleases."

(x) He was *now* willing to "guarantee" that which he had been constantly intent upon finding some pretext for depriving me of, ever since the right to it had been acquired by my acceptance of his reiterated proposal!

Mr. Tudor's denial that he ever had any intention of taking away my fifth, amounts to nothing; for his acts to take it away speak louder than words in denying his intentions so to do. Where is Tudor's letter to you in March, 1835, saying that I had forfeited my interest in the ice-house, &c. &c.? where are the numerous declarations of his agent Davenport, to the same effect? where is Tudor's letter to me, of Dec. 10, 1830? Are these not actions which speak as loud and as clear as his present professions?

"When Mr. Fenno shows you any more 'letters,' which he calculates to use in this case [at Boston] to prove that I *secretly* applied to the Government for the contract in my own name, tell him that it is false, a right down falsehood. To prove the falsity of his 'letters,' I send you *newspapers*, in which my proposal was published, the Government calling upon any one to better the proposition. You will perceive Fenno's tone to me, by the inclosed copy of his letter of 1st January. He has denied the part which I wrote to Mr. Tudor the 1st of Dec., and has inserted what he says is a fact, but I say his insertion is false. I think you ought to give but little faith to anything Fenno or Tudor says; if they do not give absolute falsehoods, they garble the truth so that one can hardly tell whether it be truth or falsehood. I believe Fenno's object in writing to me was to get me to put something on paper, that they would, if convenient, take advantage of; I therefore make him no reply. I think I can see in Fenno's letter, that there is something out of the way between him and Mr. Tudor; and that the letter is intended to draw out something from me, on which he may be able to build himself up again.

"Mr. Tudor's intentions not to take away my fifth, and Mr. Fenno's 'cannot forbear to express the hope,' &c., appear to me to chime in, as if they had become fearful that 'strength' might be wanting to accomplish their desires, and they had therefore come to persuasions and protestations of intentions. This does not look like a valorous man going to battle, having a good cause to defend.

"By your letter of the 2d Jan., I see the ground Mr. Tudor was going to take, so as to consume time. He was wrong in saying I would not proceed to business until Mr. Fenno had procured papers, and was put to very useless expense. (y) We

(y) "I called on Mr. Tudor and informed him of the proposal I was empowered to make. He said he would not treat unless it was in a very formal way; that you had put Mr. Fenno to very useless expense to procure papers before you would proceed to business with him. It was now necessary that he should adopt the same course towards you, and he should require of me a certified copy of my Power, and a proposition in writing."

This is valuable as a specimen of the *minor* fabrications, — the *small* coin, —

proceeded to business immediately on his arrival; and nothing was said about expense or papers until the accounts were made and ready for signing, and then, it was only to *legalize* his *Power*, so that he could give a receipt and bind his principal to stop the law suit then pending in Boston. But notwithstanding those precautions, it seems they have evaded, at least for the present, all of them."

Feb. 12. [To another friend.] "Whatever Tudor and Fenno may say respecting their intentions about not taking my property away from me, they will do it if they can; and any assertions of theirs to the contrary, ought not to be credited for one moment. My friends here are of opinion that I have done even too much towards a compromise with Mr. Tudor, and that the better way now, is to break with him entirely, and take no notice or care of him. This was the opinion of Mr. ——— yesterday." [The gentleman here named was one of those to whom Mr. Tudor was most indebted at Havana, and on the efficacy of whose continued exertions in his favor he had most relied, during the long crisis which immediately followed his sale to me of a share in his "any Privilege."]

April 27. "Respecting the evidence you wrote me about, I am advised by my lawyer to take out a copy of all the memorials which I addressed to the Government, together with the acts of the Government upon them; which I think ought to be enough to satisfy any one that what I have done has been done according to the laws and customs of the country. But if there should be further proof wanted, I shall send you the names of all the *Regidores* (answering to your Aldermen,) who were immediately concerned in the making of the contract, together with the *Procurador Sindico General*, whose duty it is to look after the interests of the inhabitants and defend their rights. These were immediately concerned, (like a committee of your Aldermen,) and their report made to the Board, to be adopted, or modified or rejected. So, if there had been any 'fraud,' it would have been with all of them, more than a dozen in number."

which Tudor has deemed it not unworthy his lofty character to employ himself in stamping and giving circulation to, respecting the "poor miserable carpenter."

The truth of the matter was, that, to spare *him* "expense," — certainly not for my own gratification, — Mr. Fenno, from the moment of his arrival at Havana, had been invited to be, and had been my guest. The only expense to which he was put, was that of having his *Power* translated and notarially recorded; and Mr. Tudor was perfectly aware that without this formality, the *Power* was as worthless, and all acts under it as invalid, as if it had been a piece of old newspaper. This was the case at Havana. As for his little "tit for tat," at Boston, — where such formalities are but little known; and where, if it had been otherwise, they were not demanded by the nature of the case at that point, — it harmonized well with the "grand climacteric" to which this "child of a larger growth," was approaching.

May 24. "I now send," &c. &c. "The accusation of Tudor, that I fraudulently obtained the contract to supply this place with ice, is as false as the other pretexts he has made use of before now, to despoil me of my rights, and resist the fulfilment of the contract we had entered into, forcing me into law suits which he has lost by the decision of the Courts here.

"It was impossible that I should have obtained this contract fraudulently; as, according to the laws, the City Council cannot make contracts unless the proposals are made public by announcing them in the papers of the city, as you will recollect was done in those of the 28th, 29th, and 30th of January, last year, which I remitted. In those papers I remitted you, all persons were invited or called upon who might wish to better the proposals which I had made; and although time was allowed, that they might do it, no one presented himself; on which account the contract was ratified with me. You will be more fully instructed by the exact and legal copy of the process remitted you, through which the contract was made, and is more than sufficient proof of the legality of my contract and which you can make use of in your Courts to show them, I think, that they have nothing to do in this affair.

"Mr. Tudor has not proceeded with me, with the same frankness and faithfulness I have with him. You will see in this process I told the City Council, that if Tudor wished, and agreed with me on the conditions of the contract, we would be partners. I feel sure he would not have done this with me. I not only did this, but immediately gave him notice, as you will see by the copies of the letters I have sent you, and invited him to enter into the proposals. But that which he did was, to remit me a Power, that I should accept the new contract for *him*; and accompanying it by a letter in which he denied me the right of charging the ten per cent. or the fifth interest, which, by a written agreement, has belonged to me ever since the first contract."

Nevertheless, Mr. Tudor found means to keep his Boston suit for \$100,000 pending over me; and to deprive me, so long as it should be in his power to keep matters in this state, of all control over my property there; a sale of a portion of which had, in consequence of his attachment, been interfered with, in such a way as to expose me to serious loss and trouble from the *bonâ fide* purchasers, who had come upon me with a claim for damages.

In this state of things I was determined, — as I had informed my correspondent, — that no property of his in my hands should pass out of them until he should have ceased so to harass me. In one respect, however, — as has already been intimated, — I

have reason to be thankful for the course he saw fit to pursue; for, had he desisted from his persecutions and accepted my offer of \$13,500, it would have been to me a clear loss of so much money. The reason will appear from the following order of the Captain General:

"Captain Generalcy of the Ever Faithful Island of Cuba,
Havana, Oct 21, 1839.

"The chief Alguazil of this Captain Generalcy, will notify to the ice-contractor, that he proceed to demolish the ice-house, situated between the houses adjacent to the Cathedral Church, upon the wall in the vicinity of the Boquete: this being in conformity with the deed executed on the 5th August, 1831 — Which order issues at the request of the Commandant of Engineers, who is about to proceed immediately to the repairing of said wall.

ESPELETA."

This was followed by another, under date October 25:

"In view of the representation made by Mr. John W. Damon, expressing his compliance with the order requiring him to proceed immediately to the demolition of the ice-house, and praying time to build another deposite, I have judged fit to grant him until the 1st of April of next year; by which day, the house must have been demolished and the ground cleared away. Which will be notified to him by the chief Alguazil of this Captain Generalcy.

ESPELETA."

This order left me, of course, no option but to build immediately on the lot mentioned in my letter of Dec. 4, 1838, as having been offered me; and then pull down the building, for Mr. Tudor's share in which I had offered him nearly \$14,000. His mode of treating that offer had therefore saved me from a heavy loss.

The intimation has got abroad, — whether originating with Mr. Tudor, he can best say, — that this order of the Captain General *was procured by me!* Not to mention other proofs which might be adduced to show the absurdity of this slander, I will state one fact which is conclusive upon the subject. The reader is aware [see § 6] how the ice-house stood with reference to the wall of the city. That wall, — built of hewn stone, and rising from beneath the surface of the water of the Bay, to an average height of some thirty feet or more, — had become much undermined by the action of the waves; and the work of repairing it, mentioned in the order of the Captain General, consisted in taking it down and rebuilding it upon a new foundation. The repair was a general one, and had begun at the other extremity of the city, nearly a mile from where the ice-house stood. Such is the nature of the little job, — involving the immense

labor and expense of coffer-dams, &c. &c., in a turbulent sea, — which, according to the stupid slander referred to, was *got up through my intrigues with the authorities!* And all for the purpose of benefiting myself at the expense of Mr. Frederic Tudor!!

A fair specimen this, of the accuracy of the information obtained from some sources in regard to Havana affairs.

The demolition of the building, of course took place; and thus terminated that *community of property* between Mr. Tudor and myself which survived, for sometime, the expiration of the partnership, (or partnership no-partnership,) with the history of which, from the moment of its conception down to that of its death, the reader is now sufficiently acquainted. It only remains to add, that besides his Boston suit for \$100,000 damages, Mr. Tudor saw fit to institute the one at Havana, mentioned at the beginning of this exposition, wherein he claimed to be the owner of four fifths of the contract entered into by me with the Cabildo!

The mode in which, and the principles upon which, this suit has been prosecuted by him, may perhaps form the subject of a supplemental narrative, wherein other distinguished personages besides Mr. Tudor, will be seen to figure.

1. The first part of the document is a list of names and dates, which appears to be a record of some kind. The names are written in a cursive script, and the dates are in a more formal, printed style. The list is organized into two columns, with names on the left and dates on the right. The names are: John Smith, James Brown, and William Jones. The dates are: 1810, 1811, and 1812.

2.

3.

4.

5.

6.

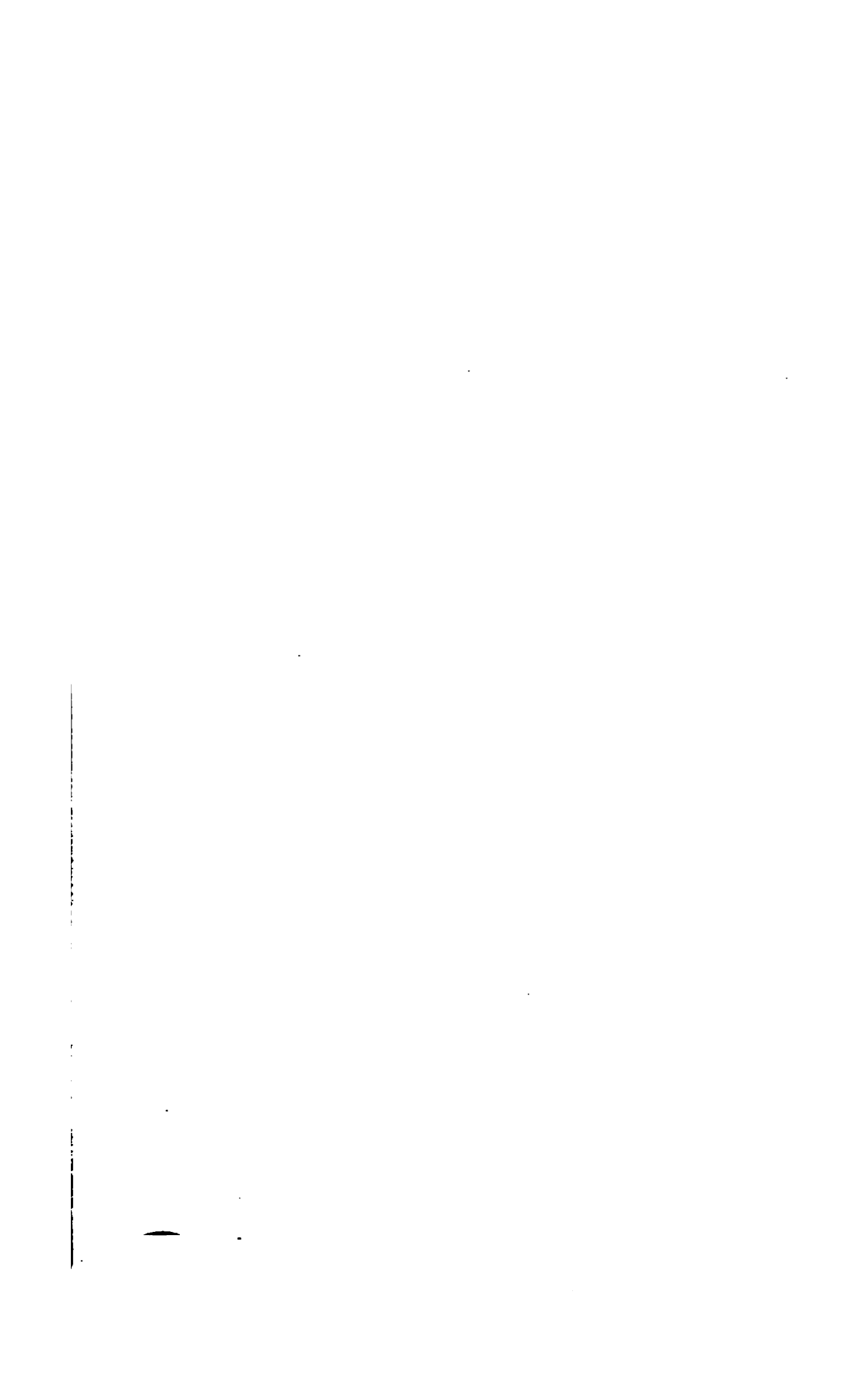
7.

8.

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10.

A P P E N D I X .



APPENDIX.

(A.)

Contract between J. W. Damon and the Authorities of the City of Havana.

(Translation.)

IN the ever most faithful City of Havana, on the 23d of August, 1838, before me, the undersigned Notary and witnesses, appeared *Mr. John W. Damon*, a resident and trader in this place, known to me, and said that he has agreed with the most excellent Ayuntamiento, with the approbation of the most excellent Lord its President, the Governor and Captain General, to close and execute the Contract for supplying the City with ice, (the existing Contract being to expire on the 31st Dec. of the present year,) the preliminaries to said Contract having been proceeded in according to law, by the publication of the proposals, and the due participation to His Excellency the Intendant and Superintendent General of the Royal Hacienda, which Contract is in the terms following, to wit:

First. The said Damon binds himself to supply the market of this place with ice, for the term of ten years, to be counted from the 1st day of January, 1839, and to end on the 1st day of January, 1849.

Second. The ice shall be sold to the public at one half real the pound; and no higher price shall be demanded under any pretext whatever, during the term of his contract.

Third. As a security for a constant supply of ice, he binds himself, in case of a failure of supply, through any default of his or of his agents, for twenty consecutive days, to pay the penalty of \$4000, which payment shall be made to the most excellent Ayuntamiento. And for the punctual fulfilment of this condition adequate security shall be given.

Fourth. In conformity with what has been agreed upon, said Damon shall have and enjoy the exclusive privilege of supplying ice, and no other person shall be allowed to introduce or to vend said article during the period for which this contract is made.

[Here follow other numerous details; after which the instrument closes as follows.]

And being present *Don Jose Patricio de Sizgado* and *Don Carlos Jose Pedroso*, Regidores commissioned by the most excellent Ayuntamiento, and *Don Romualdo de Zamora*, Syndic Procurador General, known to me, they accepted, in behalf of those whom they represent, this Deed and the Mortgage therein embodied. In testimony whereof the said Regidores and Syndic, together with the Contractor, hereunto set their names, &c. &c.

(B.)

[*Copy.*]

Memorandum of Proposal to Mr. J. W. Damon.

I will sell one tenth of the ice-house and rights appurtenant, for three thousand dollars, payable in one, two, and three years, with interest. The sale to be made the 1st of Jan. next, say when you are in Boston. Or I will contract to sell you the same share for one dollar at the end of the term proposed below; together with another tenth for three thousand dollars, if you are willing to return here, conducting the business as at present, and remain here two years and a half, that is to say, three summers. You will then have one fifth of the concern for three thousand dollars paid.

It is understood, when a partner in the concern, you are to undertake to look after the business, and when it shall be necessary, to come here: although you would perhaps do this for your own interest, it is necessary to me that it should be agreed for.

If the business should be equal in gross to 16, 17, or \$18,000 per annum, you will make a profit by buying, next January, for \$3,000, rather than have it sold to you for one dollar, in the 3d year.

After you have accomplished the time which I am desirous you should remain here, your are, in your occasional visits, to be allowed, say two dollars a day during your absence from Boston on the business.

At the termination of the present year you will be better able to know what the business will, in all probability, amount to,

and I make the proposition to you absolutely, and give you the offer of accepting it until the first of January next.

Observations.

It is my wish to keep you here in good pay for some time, and not asking you to run risks, but making you the one dollar offer, and the further right of purchase at the termination of the three summers for three thousand dollars, to complete your fifth interest, although it may be worth more. If it is worth less, you are not bound to take it.

By a steady conduct of the business, with a uniformity of supply, you will know what the business ought to be, and the agent who may be subsequently appointed be checked by the records of five years which will be known to be correct.

The Increase of the Business.

I have not changed my opinion respecting street sales; and I should, if there had not been so much to do, have urged it more particularly. I hope you will make another and determined effort to get it going on when there is some leisure. I think the sales may be *doubled* by this thing.

I have put the net income at \$10,000, allowing \$6,000 for expenses, but if one cargo can be made to answer, they will be reduced very nearly one half.

I do not think any increase is to be expected, unless it is to be effected by street sales; with a warm season it will be better, and with a cold one worse, than last year.

Concluding Observations.

I cannot be expected to sell at a rate less than what the property itself will produce in three years.

It is no object to me to sell, unless all the personal attention which may be necessary *here*, shall be given by the purchaser, with an allowance, as above stated, for his expenses.

To be relieved from personal attention to the business, particularly *here*, is very desirable to me. If this country should remain as it is, and nothing occurs to interrupt the business, you have a pretty fair prospect of owning a property $3\frac{1}{2}$ years from now, which will net you \$2,000 or more annually, and in the progress to this, if disastrous events interfere, you will have made and secured a very good pay for your trouble, let the business be interrupted at what period it may.

The present house is guaranteed to stand against being removed by the authorities of the place, for three years, and the

new house to be built at the expense of my four fifths. Your fifth, instead of paying, is to be made up by your attention to the erection; and the concern charged with the two dollars, unless you are here selling ice, as at present.

Should you return home in Dec. with a view of coming out here again, I am willing to be charged two doubloons, if you come by way of Baltimore or Philadelphia, rather than by the way of Cape Cod in that stormy season.

FREDERICK TUDOR.

HAVANA, May 5th, 1823.

Sometime after the 1st of January, 1824, I having in my hand this paper, distinctly offered to J. W. Damon to accept the proposition contained in it, and which he distinctly refused: which refusal ended it.

F. T.

(B. B.)

Bill of Sale from Tudor to Damon.

In consideration of Six thousand dollars, paid to me by John W. Damon, by his note of hand and money, I do hereby sell to him one-fifth part of the ice house and its appurtenances, together with the like proportion in any Privilege from the government of Havana, where the ice house is situated, this interest commencing on the first of January, eighteen hundred and twenty-four. This sale does not extend to heirs or assigns; but in case of any misfortune whereby said J. W. Damon cannot render any aid to the concern, then any money paid by him, for the said fifth, may be refunded to his representative by F. Tudor, the grantor, or his heirs; but not in case J. W. Damon should remain in good health. The right of instructing the mode in which the business shall be conducted is reserved entire in said F. Tudor.

Said fifth is not to be charged any expense for cost and freight of ice now in Havana, but bears its proportion of the commissions of \$300, to be paid Mr. George Knight.

Refrigerators, jars, &c. to be sold on account solely of F. Tudor.

Mr. Damon goes to Havana, and is to charge the concern ten per centum for his services and remittances and other necessary care of the business; the same as last year.

FREDERIC TUDOR,
J. W. DAMON.

BOSTON, January 29, 1824.

(C.)

Renewal of the Privilege.—Extracts from my Letters to Mr. Tudor. (They convey a faint idea of the course which this business took, and of the trouble and anxiety it occasioned me.)

Aug. 14, 1824. "I think it would be well for you to come out here as soon as you can make it convenient. I have already informed you that the original charter could not be found; if it had been, there would have been a memorial presented long ago, which might have prevented the present difficulty. If you have it in your possession it would be well to bring it."

Sept. 2. "Mr. A. says he does not know whether there is some intrigue or not; nevertheless, Mr. D. has been asked for his influence in favor of somebody, and gave an unfavorable answer, says Mr. A. I understand Mr. F. is to be here next month. I think it of the utmost importance that you should be here as soon as you can make it convenient."

Sept. 12. "I also learned of Mr. A. that a Spaniard (he said he did not know who) had made a proposition to the Cabildo, to supply the Havana with ice, at a real a pound, and that Mr. D. had made the same proposal, (if I understood him right,) if they would renew the charter."

Sept. 16. "I this day called again and presented him with your letter, and requested his influence with the inhabitants of this city, in your favor, respecting the ice Privilege. He said he was willing to do all he could for your interest, that there was no doubt the Cabildo would be willing to give you the preference, and that Mr. D. would be able to accomplish the business. I hope to see you here in all next month; for I think it of the utmost importance for the ice business, that you should be here."

Sept. 21. "Yesterday, by accident, I met with J—— A——, (he is the man who said he was trying for a Privilege, about 18 months past,) who told me he had a memorial before the Cabildo for a Privilege. It is certainly for your interest that you should come here as soon as you can make it convenient."

Oct. 2. "I have heard nothing from the Cabildo, or your competitor, since my last."

Oct. 4. "If this finds you in Boston, it is of the utmost importance that you should come here in all possible speed; for I have just seen Mr. D. who told me that the men who have petitioned the Cabildo, for the Privilege of bringing ice into the Havana, have offered to supply the city at one real the pound,

and have a *number of places* about the city where the public may be supplied. *They do not ask for any land*, but will erect their house at a convenient place on their own land, and then separate it to the places for the convenience of the public.

"It is now one o'clock, and the vessel is to sail this afternoon; *do not neglect to come as soon as possible.*"

Oct. 12. "I wish that the causes of my fears were not of a greater magnitude than you conceive them to be; and if I have disclosed a cowardly heart, you will impute it to my simplicity or ignorance."

Oct. 16. "I this morning called on the Doctor, to see if there was anything done in the Cabildo respecting the ice business, who told me there was not; there were six or eight men appointed to consult and report on it, and it was likely in five or six days he should be able to give something certain.

"M. told Mr. S. that there were some Spaniards determined to take the ice business from you; that it was contrary to the laws of the country for a non-resident to carry on any business in it, &c., and there was no doubt they would carry their point."

Oct. 18. "I have heard nothing of A. and his confederates, since my last."

Oct. 26. "Yesterday I called on the Doctor, to know if anything had been done in the Cabildo respecting the Privilege. The Doctor said everything was perfectly secure; for the Cabildo had given you the preference instead of A., yet there were some negotiations to be made with the —, which were to be made or commenced that evening."

Nov. 3. "I was much disappointed when I found there were no letters from you; but I consoled myself with the idea, that the reason you did not write, was, *that you were about to embark for this place.*"

Nov. 8. "Saturday I called for Mr. E.'s information about the changing of the market; he said he did not think it would be done soon, but when it was set in motion he would give us notice, and recommended me to D. for particular information, as he was in the Cabildo the day before.

"When I saw Mr. D. he said, the affair of the privilege is not yet concluded, and it is uncertain how it will turn; therefore it is best to patch up the house and say but little until the Privilege affair is settled."

Nov. 14. "I have not seen Messrs. E. or D. since my last; but, by accident, I met with Mr. A., who said Mr. D. had a deal of trouble about the ice privilege, that he had been accused of being the contractor, &c.

"It is quite current about the city, that there is an opposition; and to-day I was told, by an ice-cream-maker, that he had been told by one of the regidores, that, on the first of January, ice was to be sold at a lower rate. One offered it at \$3 the arrobe, and the other at 20 reals the arrobe."

Nov. 19. "Mr. D. said the Privilege was now clear; that at the last sitting of the Cabildo, it passed a vote that the preference should be given to you, and on the next (that is to-day) it was to act on the length of time, price of ice, &c."

Nov. 21. "You have been told that the Doctor said he could do nothing, for want of the original charter. You have also been asked some questions respecting the original charter, or a copy of the same, but never have mentioned it in any of your letters; these are unpleasant things."

Nov. 26. "I then asked him how far he had progressed with the ice Privilege. He said it was clear, but not yet concluded. It was the same as I wrote you on the 19th and 21st inst."

"You exhort me to boldness, a suitable degree of which may be called virtue; but I hope you will never be able to charge me with temerity."

Nov. 27. "Mr. D. says, he does not think we shall be able to get a dispensation of tonnage duty, only on those vessels loaded *entirely* with ice." "Mr. D. says, it is a matter of doubt whether we recover the exacted tonnage duty, as they were vessels that arrived *after the charter expired*, and brought other articles."

Dec. 1. "I fear the papers will not be brought to a close before January."

Dec. 9. "The ice Privilege, in my opinion, is secure, and will be placed on the same footing as before; vessels bringing nothing but ice will be cleared of tonnage duty, and no others."

Dec. 11. "Mr. F. came here this morning and said, he had made inquiries and finds everything in a good way. Mr. F. said, he had made inquiries respecting the tonnage duty, and found that it was impossible for vessels bringing ice and other articles to be cleared of the tonnage duty."

1825. Jan. 28. "This morning I informed Mr. D. that the supply of *ice had failed*; he said that it was *well that the contract was not concluded*, for that would oblige us to have ice here all the season."

March 3. "Yesterday I called on Doctor —, to inquire after the contract; he said, that nothing had been done for some time, on account of the Commissioners being in the country, but you might be sure everything was secure."

March 9. "There has nothing taken place respecting the tonnage or contract, since my letter of 27th. ulto. continued to 3d inst."

March 17. "Every time I saw Mr. D. in January, he said, he was looking for information of the old charter, to aid him in drawing up the new contract."

March 19. "Mr. D. arrived in town yesterday afternoon. I shall endeavor to see him as soon as convenient."

April 1. "I have seen Mr. D. since my last, who says nothing more is done about the Privilege. Mr. K. says, Mr. D. is examining the papers you sent here."

April 7. "There has nothing been done for the Privilege, or about the house, since mine of the 1st inst."

April 20. "There has nothing been done about the new Privilege. I saw Mr. K. two days since, and he said Mr. D. was in the country, but he was in hopes to have everything settled before he left this for the U. S. which would be some time in June."

April 25. "I am as ignorant of any further progress of the Privilege, than of what you have been informed, as the man in the moon; not that I have not made inquiries, but that I believe there has been no further disclosure made, however far it may have been discussed by the Commissioners. I would wish, for your own convenience, that you might be saved the fatigue of a voyage here; but for my own satisfaction, I *should be very happy to have you come.*"

April 27. "I have just returned from Doctor —, by way of the Custom House. The Doctor tells me the same thing as heretofore; that is, that everything is secure; but there is one escritura wanted to finish the business. The reason it has not been done, he says, is, that Mr. D. has been in the country, and now is in Matanzas."

May 11. "I saw Mr. D. to-day, who said nothing further has been done about the Privilege. They are now examining the Custom House records to ascertain the tonnage duty."

June 10. "I was to see Doctor — three days since, who told me the same as usual, that the Privilege was *concedido*, but the Commissioners had not completed the contract."

June 21. "Mr. D. had some talk with the Doctor about former papers, the Intendant, &c. I told Mr. D. that it had been urged upon me very hard [by Mr. Tudor] to have the contract finished; when he made the answer, that it probably might be done in two or three weeks."

July 1. "A few days since," [here some details about a document wanted] "it is possible something may be done about the Privilege soon."

July 6. "I saw Mr. D. this morning, when he showed me the paper he had drawn up for the contract. The contract, I

think, contains seven articles, which I am not able to repeat, having only looked it over while he read it. It gives you the exclusive privilege of supplying Havana and its suburbs with ice, at a real per lb. for the term of six years from the 1st of January, 1825."

July 20. "I asked Mr. — if there had been anything done about the contract; he said no; the Intendant *had refused to admit any vessels with ice without paying the tonnage*, and that *he was about to levy a duty on ice*. He said there was a memorial before the governor about it; that all the documents were to be collected and sent on to you. What will be the result of all this it is difficult to ascertain."

Aug. 24. "Mr. D. said he had had an interview with the Intendant, and that he had promised to desist from the contribution on ice, but it was not yet given officially."

Sept. 21. "About ten days since, Doctor — told me that the affairs or things of the ice house *estanandantes*; that is, are going on."

Oct. 3. "This morning I presented the — your enclosed letter. After reading it, he said he would inform himself of the Sindico, how far the business had progressed, &c. and said he would let me know in two or three days; for which I must call at his house, and in case of his absence his *major domo* would inform me. The — asked me what D. had to do with it, &c. I told him that Mr. D. was appointed by the Cabildo to draw the contract, which had been done; but not yet accepted by the Cabildo. I told him the Intendant had proposed to lay a contribution on the importation of ice; which, under present circumstances, would be ruinous."

Oct. 6. "This morning called on the —, when he said, he had not been able to do any thing."—"I fear there is not much to be expected from that quarter."

Oct. 17. "This morning I called on the — to know the result of his inquiries at the Sindico's office, when he said, that Mr. D. had not yet returned from the country, perhaps in a few days he might, &c."

"It is possible the — may do something in our favor, but this second delay strengthens my former doubts."

Nov. 15. "I have not been to see the — since I wrote you. I met Mr. D. about the time the *Criterion* arrived, when he said the contract was *hung up*, or to that effect."

Nov. 30. "I have been to see the — since my letter of the 15th inst. who said, he had spoken to one of the regidores; but, for want of information respecting the contract, (this is pretty evident that he has not inquired of the Sindico,) that is,

how far it had proceeded, and what were the obstacles in the way, he could do no more; he wished," &c. &c.

Dec. 10. "Mr. D. said that the Fiscal had told him that if it could be made evident that the importation of ice would not bear the imposition of duties, he would consent to have the contract passed."

1826. Feb. 27. "Last evening I returned from Matanzas, which I have examined all over, and to give you a better idea of the place, or rather to explain my own more clearly, I have sketched out a part of the city and its harbor. The city of Matanzas stands." &c. &c. I am rather doubtful whether the first year or two will be profitable, but it is likely it may become so after a while. Many people appeared very anxious to have an ice house established there; and Mr. M. said he had no doubt but the authorities would grant everything that had been granted in Havana, and anything more was very doubtful. I am now to see what and how much has been done *here*, and then make an attempt at Matanzas again; but I would like to have your opinion farther.

March 20. "I have had no time to inquire after the contract, for I have been so unwell since the discharge of the Noble that I could do hardly anything."

March 25. "The Doctor said the contract remained as it was some time since; that is, with the Intendancy."

And thus did the matter go on, week after week, month after month, and year after year.

(D.)

Mr. Tudor's first Pretext for Confiscating one half of my stipulated Compensation. — "Improper Letters." — His Munificence illustrated. — He "endeavors to be particularly moderate," and levies upon my one fifth Share a Tax of no more than \$100 per annum. — Service of Keeping and Remitting his Money thrown upon me, and performed gratis. — Loss of a Remittance of \$400 charged to my account. — Cabbage Commissions charged, and Dog's-Meat Charges disallowed.

I must here request the reader to turn to Mr. Tudor's "Memorandum of Proposal," and also to his Bill of Sale, and peruse them with special reference to the two following questions:

First. After becoming Mr. Tudor's partner, could I anticipate

that the gains of the joint concern were, before a division of them between us, to be reduced by any charge on his part, in the shape of compensation for the attention given by him to our joint business? After what had passed between us, had he any right whatever, in law or in justice, to seize upon and appropriate to himself, under the name of a commission for his services to the concern, any portion of the proceeds of our business?

Second. Had he, in law or in justice, any claim upon me, as ice-house keeper, for any services essentially differing in kind, or even in degree, from those rendered by me in that capacity previously to becoming his partner?

With regard to the first of these questions, it is seen, that in neither of the two documents is to be found a word, directly or indirectly intimating that Mr. Tudor was to receive any compensation for continuing to give to the business in which he had sold me a fifth interest the same agency which he had given when the whole belonged to himself. In his proposal, Mr. Tudor had said, "At the termination of the present year you will be better able to know what the business will in all probability amount to." How was this to influence me in my decision? How, but as one of the elements for ascertaining what the business was *worth*? And how was this to be ascertained, but by striking the balance between the expenditures and the receipts? This balance showed what the property and business yielded; and when the owner of that property and business invited another to purchase a share therein, the invitation (in the absence of all intimation to the contrary) could not but be understood as being made with reference to the *result* of the business, in regard to profit or income; *said result to be arrived at in the same way*, for the future, that it had heretofore been arrived at. If, in keeping his account with the Havana establishment, Mr. Tudor had been in the practice of distinguishing between the use of the capital invested therein and his own agency in making that capital productive, and, in consequence of such distinction of making against the establishment, under the latter head, a certain charge as compensation for his services, his right to continue this practice, in stating the accounts of the establishment, after selling a share in it to any one duly notified thereof, would have been incontestible. But is it not equally plain, that after such sale, unless this were attended with a stipulation or explanation to that effect, he could have no right to introduce this practice? (a)

(a) Besides this annual tax, under the name of "commissions," levied upon my share of the concern, there was, so far as I know to the contrary, another annual

We will now pass to the second question : the one relating to the nature and extent of the services which he had a right to require of me. On this point, Mr. Tudor's *Proposal* says, "conducting the business *as at present*;" which words determine no less the nature of the services which he proposed to me to render in consideration of the ten per cent. and other advantages therein held out, than the amount of that compensation. His *Bill of Sale* says, "Mr. Damon is to charge the concern ten per cent. for his services and remittances and other necessary care of the business; the same as last year. Here, also, it is "*the same as last year.*" The only difference between this definition and that contained in the previous document, is the one expressed by the words "and remittances;" and a most important difference it proved to be, not only to *my* "higher cares, trouble and anxiety," but to my pocket, as well as that of Mr. Tudor.

tax,—to say nothing of occasional assessments,—levied upon it, in the shape of profits on the business of supplying the Havana establishment with ice.

So far as I know aught of the principles of justice and fair dealing, the only course, on the part of Mr. Tudor, at all compatible with them, was to charge those supplies of ice *at cost*. Some men, standing towards others in the relation in which my purchase of a share in his establishment placed him towards me, would have felt a single cent of profit on those supplies burn in their pockets like a lump of frozen mercury. It is true that the obligation to furnish ice at cost was not expressly contracted by him; but if ever there existed any such thing as an *implied* obligation, surely there was one here.

When he was sole owner of the establishment,—at that time when he proposed to me to become part owner of it,—there would have been absurdity in the idea of his charging the ice furnished to it, at anything more than the bare and *exact* cost. What was the thing which he had sold to me, and which I had purchased? Why, a share in the establishment, *as then conducted*. Agreeably to his proposal, I was to become the owner of one fifth thereof; and the income on my share was to be one fifth of that same income, the whole of which would continue to be his if I should not accept his proposal. The sale being made, the income,—except so far as might be stipulated to the contrary,—was not to be subject, previously to its being divided between us, to any other deductions or charges than it had been subject to at the time the sale was proposed.

That Mr. Tudor's "commission" tax was not the only one levied upon the share he had sold me, I do not positively affirm; for I have not the materials at hand to substantiate such an assertion. But I do say, that I positively believe that he was very far from governing himself by the principle of supplying our establishment with ice *at cost*; and I do affirm that his course afforded more than one ground for my belief. In July, 1829, I wrote him as follows:

"I have your account of expenses for this year, made out by Mr. Wyeth; and I there observe that you continue your \$500 commission, although there is an extra charge for clerk hire. I also perceive, that the cargo of the Francis is brought into the account. I hope there will be a sum equal, to balance it, from the insurers."

This, I give as a sample. To mention but one of the more general grounds upon which my belief arose: Mr. Tudor proposed, on more than one occasion, that I (?) should name (of course reserving to himself the right to agree or not) the price per ton at which the ice shipped to our establishment should be charged.

If my belief does him injustice, he possesses the materials for demonstrating this, by proving that he made no profit on the supplies to our establishment. If he can prove this,—or even that the aggregate cost, and *nothing beyond the cost*, of supplying the ice furnished to his different establishments, was charged to them and divided between them according to the quantities shipped to each,—I shall cheerfully acknowledge that I am now laboring under an erroneous impression.

Whilst intrusted with the Ice House as his agent, I had at first had no other trouble or responsibility, connected with the income of the establishment, than that of receiving the proceeds of sales, and paying them over daily to the commercial house by which his funds were remitted to him and the usual commission was charged; which customary commission at Havana was, in case of guarantee of the bills remitted, $2\frac{1}{2}$ per. cent.; and without guarantee, $1\frac{1}{2}$ per. cent. (b)

Thus stood the matter, at the time his *Proposal* was made, in May, 1823; which proposal was but a written "memorandum" of—to use his own words a year after—"the wish which I pressed upon you in March and April." Down to this time, the services, of which he was so anxious to secure the continuance, at an increased compensation beyond the 10 per. cent., had involved no further care or responsibility, regarding his funds, than that above stated. A short time after, however, just previous to his departure from Havana on his return to Boston, he expressed the wish that, instead of paying over his money, as previously practised, I would retain it in my own care and remit to him monthly. In an unguarded moment, I assented. (c) This,

(b) It will be seen that he held me strictly to the guarantee. Even after an undoubted bill had been accepted, he would still keep himself safe behind the formula—"which, when duly paid, shall be passed to your credit."

(c) It was a hasty and inconsiderate acquiescence on my part, which, under the circumstances in which we then stood, could not be ascribed to any other motive than a friendly and liberal desire to gratify and to serve him. Although it was a great saving to him, it was on my part (to say nothing of the personal risk attending it) a purely gratuitous assumption of most serious trouble and anxiety; for, no addition to the compensation I had been receiving whilst free from this care, was offered, and none was asked; and, seeing that Mr. Tudor's wish that I should consent to continue in the post was already as urgent as it could well be, I could not, in giving my assent to this modification of the "as at present," referred to in his previous proposal, have been influenced by any such motive as a supposition that my assent might be necessary to secure such a disposition on his part.

The service, then, was a purely gratuitous one, valuable to him, and, to myself, onerous in the extreme, and even dangerous, as he himself subsequently proved that he was conscious of its being. And yet, mark the sequel! It proved the cause of reproaches and gratuitous insults from him, without number; nor was this all, for my pocket was made to suffer. Towards the close of 1825,—when the amount which I had thus been remitting to Mr. Tudor, since the formation of our partnership, was about \$30,000,—I had the mishap to purchase for him a bill for \$400, which turned out to be worthless. I had bought this particular bill in preference to others, solely because he had enjoined it upon me *not* to buy bills always of the same persons. I had good reason to believe the bill trustworthy, or I should not have bought it; but it turned out to be good for nothing. The commissions which I had saved him exceeded the amount, many times told. Nevertheless, so soon as he had reason to suppose the money was in jeopardy, he wrote to me saying: "I know not how I can credit you with such a draft, when neither drawee nor drawer are anywhere to be found. In my opinion it will be lost. I shall leave it with you to determine whether you think I ought to lose by your taking a bill which all sober-minded people would say was bad before it left Havana."

This is a sample of the "*liberality*" with which the "poor miserable carpenter"

however, was the only modification of the "as at present," proposed in May, 1823, which entered into our subsequent agreement of January, 1824. And yet, we have seen what vast additions to my duties, as determined by this standard, had been imposed upon me, by the force of circumstances,—circumstances which I could not have foreseen, but which Mr. Tudor could not but have foreseen, (in their general character at least,) and which he was bound in good faith to apprise me of.

Such was the state of the case, in reference to the two points, presented by the above questions. And now for those "improper letters," the reference to which by Mr. Tudor has produced this Appendix.

In a letter from him, under date Dec. 1, 1824, occurs the following paragraph :

"I shall, when I get your accounts to the close of this month, make up the accounts for the year. I have been in doubt what I should charge the concern *as my commissions*. The Charleston and Savannah Ice Houses are charged \$200 a cargo, or rather a year. I think \$500 will be about right for Havana ; so that you will pay \$100."

To this, I replied, under date Dec. 27, as follows :

"I received your No. 33, after sunset, when I had completed a hard day's work of digging, setting posts, &c. ; and nothing could have induced me to write this evening but your mention of \$500 commissions,—a thing never stipulated for, or even thought of by me before now. In consequence of which I now inform you that I shall charge the concern \$3 per day for my labor during the addition, [an addition to the Ice House which I was then constructing, in pursuance of his "instructions."] I shall expect a commission on all the remittances made to you. Your charge of commissions amounts to upwards of 25 per cent. on the amount of your bill, which, in my opinion, is high. You would not allow me any commission on the sale of cabbages and apples, but have yourself charged near 30 per cent. on the purchase." [The articles herein referred to, used to accompany the cargoes of ice. Mr. Tudor had proposed, that, in consideration of their perishable nature, they should be exempt from my 10 per cent. commission, and I had consented.]

Such was the "improper letter" referred to by Mr. Tudor! On receipt of it, he had stood aghast at my ineffable audacity, and

was afterwards to be reproached, as what he owed his fortune to! In my reply, after stating the reasons which had determined me to purchase the bill, (and also another, which he supposed to be bad, but which proved good,) I say, "I leave it altogether with you, whether I shall be credited with them or not." The result was, that *the loss of the entire amount was thrown upon me!!*

had entertained serious "thoughts of discharging you as Ice House Keeper, or reducing your pay one-half." He deigned, nevertheless, to enter into a justification of his commissions, as follows :

"The charge of a commission for transacting the business of a concern is universally done, in all the ice-houses in which I am concerned, and in all business that I ever heard of. I might as well ask you to sell the ice gratis in Havana, in consequence of your owning a fifth, as you should expect I am to do the business of the concern here and in Havana for nothing because I own four fifths."

The reader cannot fail to be struck with the exact parallelism of the two cases; and how perfectly this argument meets my objection, that nothing of the sort *had been stipulated for, nor intimated*, when he had urged and induced me to consent to become his partner. He goes on :

"With respect to the *amount* of the commission, \$500, I answer, that I endeavored to be particularly moderate; and I may add that I should willingly give \$1500 to any person who would and *could* take my place. I would, out of my own pocket, give even \$1500 to be relieved from the excessive care, trouble and anxiety of the Havana concern. But there is no person who could take my place, or who can, were I to give that or more."

And so, because Mr. Frederic Tudor would have willingly given \$1500 to any one "who would and *could*" relieve him from "the excessive care, trouble and anxiety" which he found it to his account to remain subject to, as owner of four fifths of the Havana concern; because of this willingness in regard to his own anxieties and his own pocket, he was "particularly moderate" in taking no more than \$100 a year out of *my* pocket, in the shape of a contribution to indemnify him for his "excessive care," &c., levied upon the fifth part of the concern, which he had sold me without the remotest hint that it was sold and purchased subject to any such tax! Again, coming to the subject of the cabbages, he says :

"You talk improperly about my refusing a commission to you on apples, &c., and charging myself thirty per cent. The subject is not worth remarking upon, for its amount; and I only speak of it merely to say in answer, that I make no charge on these things whatever of commissions. In the conduct of the business here, were there no care or concern but about shipping ice, apples and cabbages, a very small commission would suffice; but in the *higher cares* of this concern, in attending to everything necessary, a very large commission is in fact earned, but which I have not charged, and should, as I said before, be willing to

pay, could I find a substitute. You may rest assured I shall not reduce that charge."

Here we have it again. This twenty-five and thirty per cent. is not to be considered in the light of a vulgar "*commission*." It is no such thing; it is a sort of *tertium quid*, resulting from the operation of Mr. Tudor's "particularly moderate" and generous disposition,—a medium between the "very small commission," which "would suffice" if it were only a vulgar shipment of cabbages, &c., and the "very large commission, in fact earned," by Mr. Tudor's attention to the "higher cares." And this logic, I had to rest satisfied with; this "black mail" levy, I had to put up with, as the alternative to going to law about \$100! And let it be noted, that this notable illustration of the "they may take who have the power" principle, comes from a man who had not only sold a share in his business without any intimation that it was to be subjected to any such tax, but who, (to use his own expression after the sale,) had effected that sale through a reluctant yielding on my part to "the wish which I pressed upon you;" and who afterwards acknowledged the truth, that he had rather be the owner of *four fifths* of the concern under my management, than of the *whole* under the management of another,—an acknowledgment, too, which was made without reference to his relief from that load of cares and troubles and anxiety which he had contrived to throw from his own shoulders upon mine; for it was made at a time when, thanks to my exertions, all "anxiety" was at an end, and the business stood upon a perfectly secure footing in every respect, and it was with reference solely to my *ordinary* services, that the estimate was made. (*d*)

With regard to the charge for the work of my hands as carpenter and laborer, which I notified to him my intention to make, in consequence of the charge so unexpectedly presented by him, no one apprized of all the circumstances of my position, will question that it was one that I had a perfect right to make, even without the provocation but for which it would not have been made. And yet, his reply contains a denial of my right to charge for this labor, or for any other possible service, which, after it should have been rendered, Mr. Tudor might see fit to say was but part of my duty, express or *implied*."

"Respecting your charging anything for any labor, or for re-

(*d*) In a *hostile* letter under date July 8, 1835, (written to serve as a sort of ground work for a claim for heavy damages,) after calling upon me to return to my "duty," in devoting myself to the care of the establishment, he says:

"I have repeatedly told you, and I now again write you, that I consider it rather a loss to me to have the whole of the Havana ice-business, as I have at this time, than to have my interest of *four fifths* protected and looked after, as it would be if you fulfilled your engagements."

mittances, or anything which, by contract, it is the express or implied duty of the ice-house keeper to perform, you cannot."

Such was the result of the objections which, in the recklessness of my disloyal temerity, I dared to make to the accounts of my liege. Nor were the objections altogether on my side. My own accounts were transmitted at the same period, and Mr. Tudor found the occasion most favorable for retaliation. If I had found "cabbage" commissions (or cabbaging commissions, if the reader pleases) in his account, my own was open to the objection that it contained a "dog-meat" charge. Even so! I had kept a dog to guard the premises, and the cost of his maintenance had been charged among the expenditures of the establishment, as had also that of the food of a man hired in its service. On this subject Mr. Tudor says:

"I now come to your account, which I suppose will prove correct in the castings, and everything except the charge for nine months board of a hired man, and the board of a dog. Both of these are utterly disallowed."

This was written on the 8th of Feb. 1825,—just two months and eight days after the following had flowed from the same pen:

"I have some fear that handling specie at the ice-house may sometimes be discovered by the bad *gente* (people) in the neighborhood. *Nothing can be more dangerous* than a knowledge of this kind amongst this class of people; *your personal safety would be endangered.*

"I have often told you not to *appear* unprotected; be rather always on your guard. *In my last, I recommended* PARTICULARLY *that you have a good DOG.* A Spanish *ladron* (robber) *never* makes an attack upon one who is looking out, and who is always ready for defence."

From this, it is seen that Mr. Tudor was no less solicitous about my personal safety from robbers, in Dec. 1825, than he had been in May, 1823, about the safety of the same precious person from shipwreck the ensuing winter. In the one case, in order to determine me not to attempt the passage round Cape Cod "at that stormy season," he offered to pay two ounces towards my travelling expenses by a safer route; that is, *provided* always that I should be travelling to Boston in the intention of continuing my connection with Mr. Tudor's interests, and of returning to Havana in compliance with his earnest wish. In the other case, he is "particularly" desirous, I should "have a good dog," so that I might have a chance for my life, even although robbers should be tempted to assail it by that "specie" which Mr. Tudor was requiring me to keep hoarded in a very exposed and danger-

ous position, in order that he might be gainer of the amount of that commission which he used to pay for safe keeping and remittance to the mercantile establishment where it used to be deposited every afternoon.

Well then! It turns out, that this "good dog," which Mr. Tudor, whilst trembling for the fate of his "specie," was so tremblingly alive to the importance of my procuring,—this good dog had already been procured, and had perhaps been the means of saving my life many a night, and with it, Mr. Tudor's specie. And, inasmuch as he was not a chameleon, he had not lived upon air, but had had dog's meat to eat. And the cost of this meat is one of the two things in my account, which Mr. Tudor "utterly disallowed," by way of offset to my "impertinence" in finding fault with his snip—I beg pardon, I mean—cabbage commission.

This disallowance of the two charges in my account was afterwards revoked. But the \$100 a year, out of my pocket, continued to be taken. If I was not satisfied, why, "the Courts are open;"—this being the standing reply to all impertinent objections from me to cabbage commissions, or any other petty spoliations of which the above may be taken as samples.

(E.)

1829 — 30.

The post of Ice-House Keeper relinquished by me, April 17, 1830. — Resumed temporarily, August 27. — Again relinquished, December 21. — Game played by Mr. Tudor in regard to this matter, and kept up for about a twelvemonth. — Our Correspondence renewed by him. — His Love for Strict Discipline exemplified. — My Notification to him regarding Payment of Certain Notes of his, held by me. — Novel Illustration of the Legal Doctrine of "Set-off."

Late in December, 1829, I received from Mr. Tudor, under date Nov. 26, a letter replete with insult, announcing his fixed determination to subject the ice-house keeper to certain new rules and regulations, and to reduce my compensation one half; and desiring that, if I did not see fit to retain the post upon those terms, I would place it in charge of some one else. Although I was far from believing that he possessed, either in law or in equity, any right to make any such reduction, I was so heartily sick of my connection with him as to experience anything but regret at the occasion for relinquishing the post which everything had conspired to render hateful. In my reply, besides

giving various explanations called for by his unfounded charges and unjust pretensions, I say :

Dec. 29, 1829. "Your No. 33, of the 26th ult., is received. I have read it, and pondered on it; and if you had appointed or *named* a successor, I would gladly have left the ice-house without any reply, as you have mentioned in your letter. But, as I have heretofore told you that I could not think of taking the responsibility of appointing my successor, and you have seen fit not to do it, I feel myself obliged to make some reply." — "All the protestations I have made against the accusation of employing your money for my own use, appear to have no other effect than to call forth more and stronger accusations. I make no more protestations; but I would be glad, if any one has given you information to that effect, that you would inform me who it was." — "You have, within a few months, accused me, *in effect*, of telling you untruths; but never before was it *mentioned*. I wish you may get an ice-house keeper who will spend as much of his time in the ice-house, and put his hand to the work as I have done." — "Restitution I have none to make; for I have taken naught from you; but if you think I have not earned my wages, or that I have made too much money, I will refer you to my letter of the 14th March, 1825. I want nothing but that which belongs to me. If you had informed me, three or four months ago, that you intended to reduce my pay on the 1st of January, 1830, I should have given you seasonable notice to procure another ice-house keeper in season. *To this reduction of pay I do not assent.*"

Here, then, was an opportunity for Mr. Tudor. All he had to do was, to send out an ice-house keeper, or even to *name* some person in Havana whom I might place in charge without being responsible for his conduct, and should this ever prove bad, subjecting myself to future accusations and perhaps "actions for damages" upon this ground.

On the 6th of Feb. 1830, acknowledging the receipt of his letter of Jan. 9, I say: "I am happy to learn that your brother may be expected here every day; who, I hope, will have power over *the affairs of the ice-house*, as well as those with the Government."

Feb. 21. "Yesterday afternoon your brother arrived, by whom I have received your No. 3. I have had but little talk with him, but by your letter I see that he has full power to act *in all cases*, and I hope to have some conversation with him on the points of disagreement. If he shall call on me as interpreter between him and Don Nicolas Escovedo, or any other persons, I assure you that I will do as well as I can, although you have been pleased to call me 'disloyal;' but I hope he may have been instructed to take some one *else*."

But it turned out that Mr. Henry Tudor had *not* been provided with either instructions or power "to act in *all cases*." (a) He called upon me for assistance in all matters, but could do nothing towards releasing me from my position by appointing a successor.

Early in March, I received Mr. Tudor's letter No. 4, containing, among other matter, the following :

Feb. 22. "I shall make no change in [the] allowance to you as ice-house keeper per my No. 33, of 26th Nov. last. You will observe that by the reduction of the 10 per cent. to 5 per cent. on the gross sales, you increase the general dividend. — Thus, if this reduction had taken place last year, there would have been added to the profits about \$945, of which you have a fifth. When your commission is \$1000, at the 5 per cent., you make by the reduction \$200 more. To this, the 5 per cent. (for the present) on the Matanzas business, for care, receiving and remitting, will add another \$100. In all \$1300, which is something more than double what the business can be *well* done for.

"I have an excellent man ready, and could have fifty, to take your place, at half the amount of the 5 per cent., and one who I hope will not so soon forget his duty. I am desirous of having you leave my concerns ; and you are to write to me your determination on the Matanzas affair, and also respecting your acceptance of the reduction. In order that no time be lost in useless writing, your answer will be definitive on both subjects. My mind is made up. It will doubtless be better and more satisfactory to you to leave the employ. It must be painful to you to be continually reminded of duty neglected. It is, I assure you, unsatisfactory to me to have a man in my employ who knows better than I do how my business should be conducted."

"I shall allow you five per cent. on the sale of crucibles. It is an excellent sale.

(a) Mr. Tudor's No. 3 began as follows :

"My brother comes out to Havana with full power to act for me in *all cases whatever*, and he will converse with you on the subject of the inconvenient derangement which is caused to me by inattention to the regularity and uniformity in remitting. In fact, if you cannot get over this great deficiency of yours, it is not possible to allow you, on any terms, to have the charge of my concern in Havana."

But, so far from his coming prepared "to act for me in all cases whatever," he had not come *at all* prepared to act with reference to the very point here specified, to wit : the question whether I should, or should not, continue to hold the post of ice-house keeper.

With regard to the "great deficiency," here spoken of by Mr. Tudor, he had just been replied to, for the hundredth time : "To make remittances at the close of each month, I believe to be as impracticable now, as I did when I wrote you on the 3d of last September. I found it so on the 1st of January last, or I should not have sent an order on Mr. H. for the balance of accounts of last year.

"Write a *prompt* and decided answer to this letter." (b)

This medley of coaxing and bullying is what I received, instead of the successor whom I had a right to expect. The reader will not fail duly to admire the ingenuity of the argument, in which Mr. Tudor deemed it worth his while to expend his peculiar mixture of logic and arithmetic, to coax me into the belief, that by accepting five instead of ten per cent. (and this upon the *gross amount of sales*,) as the compensation for my services, I should, as owner of one-fifth of the net proceeds, "make by the reduction." This farrago was replied to, as follows :

March 13. "Your No. 4, 22d of February, together with a letter to your brother, were received last Monday, when I carried

(b) This is the main body and conclusion of the letter. The beginning is as follows :

"I have your accounts, to the close of the year. They will be examined. Your charge for a hired man, — exceeding a dollar a day through the year, — is quite high, considering that it was never agreed to allow you a servant; *occasional* assistance has always been admitted."

He is here seen to assert, that it had "*never been agreed, &c.*" Let us go back to the year 1824, the first year of our partnership. The reader need not be told of the multifarious calls upon my time at that period, and ever since; and that these, generally, were of a nature to require me to be running about town, and often to lose much time, seeking or awaiting an opportunity to converse with people, on subjects which Mr. Tudor ought to have been there to attend to himself. An assistant in the ice house was, therefore, absolutely indispensable; it was a physical impossibility that the business should get along without one. Most men, indeed, situated as Mr. Tudor was with regard to me, would have felt it incumbent upon them, in common honesty and decency, to give me a *carte blanche* on the subject, and to *enjoin* it upon me to employ, not *one*, but a *number*. This, however, never suggested itself to the *patron*, who has made people believe that I am indebted to his liberality and generosity for my fortune. I was left to my own resources. An assistant was employed by me, and his wages charged in my account. It was this man's victuals, which, together with the dog's meat, had constituted the two items in my account "utterly disallowed" by Mr. Tudor, in February, 1825. [See Appendix (D).] On that occasion I had replied to Mr. Tudor: "I do not see why the dog's board is not a legitimate charge, and the man's also; the one is employed to work, and the other as a guard, not only of my person, but the ice-house and that which belongs to it." "The man I have with me, is the Greek you saw here some twenty months since," &c.

Through the expansibility of my patron's generosity, the disallowance was revoked, the employment of the man was approved, and his victuals allowed. Subsequently, towards the close of 1825, this assistant asked to have his wages raised, and I wrote on the subject to Mr. Tudor, who replied as follows: "Respecting the Greek, who wishes to have his wages to be increased, I leave that to your discretion. You [know] that white men do not obtain so high wages as colored, because they are plenty and of less value. If you think it expedient to increase the pay of Antonio, I shall not object."

The necessity for my having an assistant continuing, I continued to employ one from that time to the date of Mr. Tudor's present letter. And yet we here see him, when intent upon finding grounds for "*restitution*" demands, putting down in black and white, that it had "*never been agreed to allow*" me an assistant! or "*servant*," as he finds it convenient to call him; by way, perhaps, of conveying the idea, that I had been making, against the concern, a charge for the wages of a body-servant.

the one for your brother to him. After reading your letter to me, I showed it to him, who was sick in bed, and wished I would wait a day or two, that he might get up from his sickness before I should write. To-day is the first of his going abroad, and I have asked him if he had power to come to a close with me, as ice-house keeper, when he said *no*; his mission was merely to attend to the subject of a new ice-house, &c. *This puts me under the disagreeable necessity of informing you again*, that I cannot accept of the reduced commission on any account, more particularly as I am not wanted; and I *would have been glad if you had sent my successor*.

"The Matanzas affair, I beg leave to put off until I see you in Boston, which will be, God permitting, in a short time after my successor arrives."

Another month elapsed, and still no successor! I then wrote as follows:

April 11, 1830. Yours of the 13th ulto. was received per Nile, on the 2d instant, and I have shown it to your brother, and told him that *I could not think of stopping here* [at the ice-house] *any longer*; who said he would read over your letters again, and see what his instructions directed him to do, but he has not given me any answer yet."

April 19, 1830. "A man has been procured to take charge of the ice-house, and he entered on his duty the 17th instant."

From this time, I ceased to correspond with Mr. Tudor. I expected, indeed, to leave Havana immediately, and to settle with him, face to face, at Boston, all that remained to be settled between us. At the earnest request of Mr. Henry Tudor, I consented to continue to reside at the establishment, during the few days (as I thought) that I had to remain, and to give my attention to all the matters with which he had been charged, as his brother's representative. In a week, or less, — after placing provisionally in the post of ice-house keeper the person (a Mr. Limbough) whom I had procured for him, until the individual mentioned by his brother should have arrived, — he departed on his return to Boston; and my own departure being delayed from time to time, I advised *him*, by frequent letters, of the progress of the matters to which he had requested my attention.

On the 22d April, I wrote to a friend at Boston:

"I believe the difference between Mr. Tudor and myself is now coming to a close; and if so, there is no likelihood of any ever occurring again, as I now have no charge here, [at the ice-house] only by request of Mr. Tudor's brother, to look after and advise the man here, so long as I remain. I expect to leave this for New Orleans, soon; from which place I shall take pas-

sage up the river, as far as Ohio or Indiana, and then travel along to the eastward, slowly."

On the 24th April, I wrote to the gentleman at Matanzas, who gave an eye to our business there: "Mr. Henry Tudor has transferred the agency of the ice business, to the house of Messrs. Scull, Storey & Co., and placed a man to take charge of the selling of ice, and then returned to Boston, for which place I expect to set out in ten or twelve days."

On the 26th of May, I wrote to Mr. Henry Tudor: "On account of my agreeing to settle the accounts of the ice-house, I was detained here until I lost the opportunity of going to New Orleans, as I expected; and now, I fear that by the next opportunity for New Orleans, it will be too late for me take the course through the western country; so it is likely I shall remain here the best part of the coming month, and then take passage direct to Boston."

The engagement here referred to, "to settle the accounts," had been entered into by me, at the desire of Mr. Henry Tudor, and to oblige him. An incident, connected with it, occasioned the renewal of my correspondence with my partner. It will be seen that, in the performance of my promise, I had advanced money out of my own pocket, which was to be repaid from the receipts of the ice-house; that the re-payment of a portion of this money was refused by Mr. Limbough, the ice-house keeper, on the ground that he had not received instructions from Mr. F. Tudor to pay it; and that this refusal was applauded by that gentleman, through his fondness for *good discipline*. On the 15th June, Mr. Tudor writes me a letter, in part (the rest of it being on the subject of the new contract we were then seeking to obtain) as follows:

"I have received several letters from you; (c) and have not written, in expectation you had left Havana. I perceive by your account current of 22d ulto., this is not the case.

"*I thought, upon reflection, you would not leave Havana at this crisis of affairs.* The Brig Mars, for our concern in Matanzas, sailed some time since, and I hope may have arrived well. When you reflect upon the Matanzas affair, you will come right upon that question also, and matters will go along smoothly.

"I enclose you copy of a letter to Limbough, who appears to be a really excellent man."

(c) The letters referred to, had been received long before. They had all been written before I had retired from the post of ice-house keeper. Mr. Tudor seems to have thought it best to appear not to have become aware of the fact, that I had dropped all correspondence with him. He writes as if nothing of the sort had happened; and yet he must have been aware of it, for at least two of my letters to his brother had been received.

The letter to Limbough was as follows :

"I have received your letter on the subject of your refusal to pay Mr. Damon more money than you were instructed to do. This was correct; although I have every confidence in Mr. Damon, and he has considerable interest in the ice business for Havana and Matanzas, still, he knows too well how very satisfactory it is to have an agent obey orders, not to be pleased (as my partner) with you, when you have obeyed your instructions even against him." (d)

In my reply, after giving the details respecting the new contract, in continuation of those contained in the letters from time to time addressed to his brother, I say :

July 31. "*Your reflection hit the right place; it was the 'crisis of affairs' that has, and still keeps me here. I will be still more honest, to declare to you, (although it may ruin the already broken confidence you have in me,) that had the entire destruction of one or even two years' sales depended on my stay here this season, I hardly think I could have been prevailed upon to stop. You may be assured that on this contract, now pending, rests the Privilege of introducing ice into this city for many years to come.*"

"Mr. Scull tells me that his house has written you *about instructions*, and has recommended your *appointing a general agent, &c.*; for he *could not think of taking any more upon himself*, than he had promised your brother; and if I mistake not, my name was there mentioned, but in what manner I do not recollect. *I really wish you would appoint somebody to attend to the affairs here, for I am very anxious to see you in Boston.*"

"There are two things in which I ask your favor: "*First*, that you will not accuse me of meddling with the duties of the ice-house keeper, for anything I have written in this letter; for, had I not submitted to the request of your brother, — at the time very much against my inclination, — to remain in the ice-house so long as I should remain in this city, I should have known nothing, and ignorance would have kept me silent. *Second*, that you will *appoint the general agent* recommended by Mr. Scull, *very soon*; so that I may be released from my present disagreeable state. These I shall receive of you as favors, and as such, will ever appreciate them. I wait your *immediate answer* after receiving this, if not *anticipated* in your letters to Messrs. Scull, Storey & Co."

Concerning the Limbough letter, which had been used by Mr. Tudor, as a pretext for renewing our correspondence, I say :

(d) Here, under date June 15, 1830, is an acknowledgment of my being, at that time, Mr. Tudor's "*partner*." The reader will please bear this in mind.

"I have to thank you for the copy of your letter to Mr. Limbough, and particularly for that part where you make mention of the confidence you still appear to retain in me. I know not what Mr. L. wrote you about giving me *more* money than his instructions would allow. If my recollection serves me right, he was ordered by your brother, to repay me what I might have to pay out, over and above the balance then due the ice-house from me; and I can hardly see why a mistake of mine to bring in a specific sum should debar me from it. If such is the case, it is very dangerous, indeed, to make mistakes or omissions." After stating that I had not seen fit to quarrel with Mr. L. for refusing this repayment, "although he says he remembers perfectly well, seeing me give a sum of money to your brother the day previous to his sailing," (which was the item refused,) I tell him that he could not but think that *his own* course afforded just cause of complaint; "when I had arranged matters in and about the establishment, as well as time would admit, previous to your brother's departure, and then consented to take upon myself, at the request of your brother, certain debts due from the establishment, to be repaid from the funds accruing to the establishment, — to be refused the repayment of a certain part, because it was omitted in the first account exhibited; and then for you to send me a copy of a letter to the person who refused me justice, lauding him for it, 'although I have confidence in Mr. D.,' — this puts me in mind of a common saying when I was a carpenter's apprentice-boy, 'fed with roast beef, and then beaten with the spit.'" [It is to be observed, too, that with all these compliments to Mr. Damon, and to Mr. Limbough, for his rigid adherence to the rules of good discipline, no order came to rectify the injustice committed through that rigidity, by repaying the money which I had advanced!]

With respect to the "Matanzas affair," I say, in a letter written a few days after: "whether my mind will ever be correct on the subject of Matanzas or not, it is impossible for me to say. That it will never be in unison with yours, as expressed in letters on that subject, is my sincere opinion at present."

My reply, from which the foregoing extracts are taken, was closed in August, *upwards of five months after* the date of Mr. Tudor's letter of the 22d February, wherein, after stating, "I HAVE an *excellent man* READY, and could have fifty, to take your place, at half the amount of the five per cent.," he had wound up with "write a *prompt* and decided answer to this letter." I had conformed literally to this "instruction." On turning to my reply of March 13, the reader will see that it was as *decided* a one as could well be written; and that, although delayed some

days, by the illness and the request of his own representative, it was also *prompt*. Upwards of four months had elapsed since it had been received by Mr. Tudor; and yet his "excellent man ready" had not yet appeared above the Havana horizon; nor did he ever show his face. Let the reader ponder upon the course of events at this period; and then decide, whether he does or does not believe that Mr. Tudor told the truth, when he asserted, "I *have* an excellent man *ready*;" whether the conduct of this gentleman, from beginning to end of the episode we are now engaged in, does or does not deserve to be called a *game*; and whether it is or is not in *perfect* keeping with the other parts of the poem.

If neither *the* "excellent man," nor any one of the "*fifty*" others, made his appearance, *letters* came as thick as blackberries. The ice once broken by the compliment of enclosing me a copy of his letter to Limbough, Mr. Tudor seemed determined not to let the opening freeze up again. Whilst awaiting his concession of the last "favor" I had asked of him, I had letters in abundance to reply to, although not of the sort which I desired, or which the gentleman desired, who, at the urgent request of his brother Henry, had consented to attend to his business at Havana. What we both wanted, and *expected* by every vessel, (besides the appearance of his "excellent man ready," or of some other excellent man, who might not have been "ready" in February, but had got ready since,) was, certain determinations and dispositions on the part of Mr. Tudor respecting the Privilege and Contract then pending, and at a very critical point. Instead of this, there came letters to me, freighted with arguments upon the subject, which I had, (as I had a right to believe,) cut short and laid to rest, by my "prompt and decided answer" of March 13. From my reply to one of these missives, I will give some extracts:

Aug. 16, 1830. "You say you know not why my letters have been directed to your brother, and that you never had written me that, on my leaving the ice-house, I would be *incompetent to giving the directions, &c.* It was understood before your brother left this place, that I should remain here ten or fifteen days longer; and he requested me to have a representation made to the Cabildo, and that I should look after it as long as I should remain here, and give account of its progress, &c. To this, I at first objected, having reference to the second postscript of your No. 33, for 1829, dated Nov. 29, wherein you say I should be allowed to come to the ice-house '*only as a visitor*;' (e) that

(e) He had said, that in the event of my declining to remain in the post on the terms proposed, "the new ice-house keeper will be subject to no control on your part, and you will be allowed to come to the ice-house only as a visitor."

you had trusted me one year too long; that my disloyalty began, &c., &c. But when he said he requested it *on his own authority*, I consented, and told him I should make my communications to him.

"Your brother, I recollect, urged the importance of my looking after the business, saying that my interest was at stake. This, I acknowledged; but your positive refusal to my being anything more than a visitor overruled my interest. Nevertheless, after I had begun with the representation to the Cabildo, I saw that the contract was likely to be lost, if I should not continue to follow it up. My determination has been, ever since I left charge of the house, and now is, not to meddle with the duties or rights of the ice-house keeper; when he has asked advice, I have invariably given it; but when not asked, I do not give any.

"It is my opinion, that you want a person here to take charge of your affairs, in whom you should have greater confidence than you have had in any one who has had charge, at least for these eleven years past. If you do not, you will always be in hot water. You may give him some general instructions; but they should not be too minute, nor too strictly to be observed.

"You say you had no other course than the one you adopted, because I would not explain the reasons of not remitting, &c. (f) I gave you at the time all the reasons I had, and you as often said they were not satisfactory. When you accused me of appropriating your money to my own use, I declared to the contrary; and then I was called a liar, and disloyal, and you said that you should be indebted to me for the loss of your Privilege, &c. When your fears of my using your money for myself were swept away by a remittance of all, you still persisted in your proposal of your new rules and the reduction of my salary; nor did you clear me from the accusations of a—I say *thief*, for I know of no other term to give it—and a liar. I did not see fit to keep the house under those rules and those accusations.

"You have said, in the postscript to your letter, that whenever I shall incline to accept the proposal made through your brother, I can do it, and take charge again if I like it. I do not know what proposal this is, as I have had no news from him since he left here. I recollect he advised me to accept of your proposal in your No. 33, and that I told him I could not."

At length, after long waiting, I received Mr. Tudor's reply to my letter of July 31 and August 4, which had concluded with requesting as a *favor* which I would "ever appreciate," the im-

(f) It is to be noted that, in every instance of an effort on his part to reduce my compensation, his determination to do so was put upon the ground of some imputed misconduct in me.

mediate appointment of "the general agent recommended by Mr. Scull, so that I may be released from my present disagreeable state." Instead of a compliance with my entreaty, there comes another *argument*, or rather a repetition of the old threadbare apologetic assertions, prefaced by a new asseveration of "confidence;" all uttered, too, in the same old tone of *master*.

August 26th, 1830. "I have received your letter of 30th ult., with addition on 4th inst.

"I have never withdrawn my confidence from you. I have asked explanations, which you declined to give. When you wished to do wrong in the case of the Matanzas concern, I thought it time to take a stand against such a course, which never can be considered otherwise than as I have placed it.

"I reduced your pay, as I had a right to do. As my *partner*, and interested in the Havana and the Matanzas concerns, you are a different person from being keeper of the house and seller of the ice. As *interested*, and *owner of part of the property*, I had *no control*. How could I control, or take away, or lessen your property? But as agent for the concern and seller of the ice, &c., I had, and have, complete control.

"Five per cent. on gross sales, is enough and rich pay for the services; and more especially so, as you gained yourself one out of the five per cent. saved.

"As to Mr. Limbough, I know very little about him; and if he has conducted improperly towards you, I should think him very unwise; because it has always been in your power to displace him, at your pleasure. I had no expectation you would refuse the ultimatum which I sent out to my brother. It was reasonable and just. I think it remains.

"As I have before repeatedly written, you can resume your situation; but never on any other terms than those proposed in letters per Nile.

"I contemplate shipping a full cargo from hence or Kennebec; but the time when, will depend on circumstances and further advices.

"All my letters to you contain no such words or suggestions as you suppose and say they contain; I have carefully examined them. It would have been not difficult, to have established the good habit of remitting the 1st of every month, sent accounts and done as I wished. You would not. What other remedy had I than the one I adopted?

"The Matanzas concern requires looking to, and the impositions of the government and people resisted in that place."

One thing to be noted in this letter, (with reference to his subsequent course,) is, the acknowledgment of the fact that I was

his "*partner*;" and, as "owner of part of the property," *exempt from all control*.

Another thing is, that here, as on every other occasion, Mr. T. shows that he had confounded two entirely distinct things, to wit: his right to instruct me, as ice-house keeper, and his right to deprive me of the post, either directly or indirectly, by lowering my compensation. Here, as everywhere else, he betrays this confusion of ideas: because I was subject, as ice-house Keeper, to his "control," in one sense, therefore I was subject to it with regard to deprivation of office. This is evidently his train of thought. Indeed, by his language and his acts, throughout, on this subject, he betrays a consciousness that he did not possess the latter right *absolutely*; for the pretension was always advanced *as a consequence* of his right to instruct, and of my alleged disregard thereof. I would not, he said, conform to his instructions; therefore, "what other remedy" had he? The truth of the matter is, that this alleged disobedience was all *pretext*; and only served to make it obvious that he was conscious that he did not possess the right. If the child ask for liquorice and sugar candy, as the "remedy" for a cold, when he has no cold, this pretence of a cold only serves to prove, that, besides a longing for sugar candy and liquorice, there is in him a consciousness that he has no right to them, except as a "remedy." Just so in regard to my 5 per cent. pearl, and the disease in Mr. T.'s ice-house keeper; the only "remedy" for which was, that said pearl should be gulped down by Mr. T., after the fashion of the African doctors, who cure their patients by kindly swallowing the "remedy."

Another thing to be noted is, the reproduction of Mr. T.'s peculiar mixture of logic and arithmetic; which, if he have not taken out a patent for it, only serves to prove the unboundedness of his "generosity" to the public, no less than to his ice-house keepers. He had announced his determination, that if I remained ice house keeper, I must do so subject to new rules, and at half the stipulated salary. He had instructed me to "write a prompt and decided answer," "in order that no time may be lost" in despatching the "excellent man" whom he had "ready" to take my place, at one half of the half generously offered me. My answer, prompt and decided, and repeated over and over, had been, that his new rules did not suit me, that I would consent to no reduction of my compensation, and I wished to be relieved as soon as possible. And now, at the end of August, instead of sending his "excellent man," he sends me: "Five per cent. on gross sales is enough and rich pay for the service; and

more especially so, as you gained yourself one out of the five per cent. saved." (g)

Another thing to be *particularly* noticed, (with reference to his subsequent course,) is, speaking of Limbough, "*It has always been in your power to displace him at pleasure.*" Under all the circumstances of L.'s appointment, this was an absurdity. The appointment had been made by Mr. Henry Tudor, in consequence of my refusal to continue in the post, at a time when I expected to leave Havana immediately; and I possessed no shadow of authority to remove the incumbent, or to interfere with him in any way. And yet, see what Mr. Frederic here says! In the course of a few months, we shall see from the same hand a totally gratuitous and insulting denial that I had possessed any authority to displace Mr. L.!!

A short extract from my reply will suffice :

" You say you have asked explanations, which I have declined to give. I have read your letters from No. 23, 1829, to No. 6, 1830, and likewise all my answers to them, and can see nothing that I could have said more in explanation, and you as often said it was not satisfactory. I know of nothing more I could have done. You say that your letters contain no such words or suggestions as I suppose and say they contain; for you have carefully examined them. I will refer you to your No. 33, of 1829, 6th charge, (for a *liar*) the latter part of which says 'it amounted to telling me what was untrue;' to the 3d charge, (for what I have called in one letter, *thief*,) 'employing the money of the Havana Ice House, — both last year and the present, — in loans, or buying notes at excessive interest; which interest you put in your own pocket, and which I require to be accounted for as part of

(g) In the then state of the case, to send me *any* arguments on the subject, would have been deemed, by any other man than Mr. Tudor, indecent. But this argument was inherently absurd, and essentially preposterous. In the first place, it lost sight of the distinction between *gross sales* and *net profits*. There are few, if any, in the mercantile world, who would not gladly unite in a contribution that would make Mr. T. forget all disasters from coffee speculations, could he but make good, that one per cent. on gross sales and one per cent. on net profits, is one and the same thing. In the next place, the rule by which he here works would establish the fact, that, of the 5 per cent. which he proposed to cut me down to, *he* would pay but *four*; and so, it would be a reduction from 10 to 4 per cent. And, although his rule was absurd, yet it was strictly true, that, so far as my 10 per cent. could be considered as coming out of *his* pocket, it had really been but 8 per cent. ever since I had become his partner. He has since declared, that he considered four-fifths of the concern of greater value to him, under my management, than the whole under that of another. Although, therefore, the 8 of my 10 per cent. on the gross sales, which was contributed by Mr. T.'s four-fifth share, still amounted to 10 per cent. *upon that share*; still, considered as a payment by Mr. T. for service received by Mr. T., the amount was but eight-tenths of that previously paid by him *for a less amount of service*; for such the former had been, if he considered it more advantageous to his interests to be owner of four-fifths than of the whole.

the revenue of the ice concern, without consenting to the loans if still at risk.'"

At the close of August, I consented, at the request of Mr. Tudor's attorney at Havana, provisionally to resume charge of the ice-house, until Mr. Tudor should be able to send out a keeper. If there was one point upon which, more than any other, Mr. Tudor was particular in his injunctions, it was, the importance of not disclosing the amount of sales of the establishment, lest it should give rise to exaggerated estimates of the value of the business and to subsequent rivalry and hostility. On reference to his letter of April 28, 1824, it will be seen that he there lays down: "But the best privilege and the greatest security will be an exact attention that no whispering shall go abroad, that the ice business is very good. That this may not be the case, *never* forget the verbal instructions which I have given you to be followed. Do not buy your bills *all* of one house," &c. &c.

Such was the vital importance attached by Mr. Tudor to secrecy. If important at any time, it was peculiarly so at the present, when we were about to obtain that exclusive Privilege which had been the object of our untiring endeavors (or rather of *my* endeavors, and of *his* desire and anxiety, with all the et ceteras) for seven years. At this critical juncture, it came to my knowledge that the ice-house keeper was, through loquacity, violating Mr. Tudor's all-important injunction. I lost no time in advising him of the fact, which was immediately made known also to the house recently selected by his brother to attend to his interests. Some days after, I advised Mr. Tudor of the result.

Sept. 2, 1830. "By this you will learn that I have charge of the Havana ice-house. When I saw Mr. Storey again, he said that he had no power to place any one in charge of the ice house but myself, that having been given him in *one of your late letters*. I told Mr. S. that I thought it very improper to have the amount of sales made known, and as none could be placed in charge but me, I would do it, under, as I thought, the present critical affairs of the establishment, until you could be made aware of it. As it respects the charge I have of the sales of ice, I consider myself under the direction of Messrs. Scull, Storey & Co., to whom I shall pay over the money from time to time."

This letter was replied to as follows:

Oct. 5, 1830. "I have received your letter of Sept. 2. *It was pleasing to me again to see your hand-writing reporting sales, &c. as in old times;* but your letter was not accompanied with any observations on the subject of the Matanzas concern. Until this is adjusted there can be no return to a just position. I shall not concede to you anything more than 5 per cent. on

the gross sales, and am entirely indifferent whether you retain the position of keeper of the ice-house or not. I am willing you should, as I have confidence in your correctness in the main. But I must confess to you, Mr. Damon, the Matanzas affair has hurt you with me very much, *very* much. It is not well what you have endeavored to do in that affair." (h)

(h) I have quoted the passage entire, to preclude all pretext for the charge of garbling Mr. Tudor's letters by suppressing the expressions of dissatisfaction coupled by him with those of a contrary character. This renders it necessary that I should say a word regarding the "Matanzas affair," my conduct in which is here referred to as so very reprehensible. To explain it in such a way as to enable the reader to judge fully and conclusively of the respective merits of my course and that of Mr. Tudor, and whether mine afforded cause for its hurting me in the estimation of any just man, it would be requisite to enter into details that would sensibly swell the mass of matter belonging to the subject of the Havana ice-house. This subject is, in itself, far too extensive to permit the introduction of others having no proper connection with it. I must therefore content myself with giving a naked outline of the case, and stating that our Matanzas disagreement arose out of an experiment, determined upon by Mr. Tudor, to establish an ice-house at that place. The reader will see in the sequel, that, several years after the date of the above letter, Mr. Tudor's emphatic protestations of entire and *never-interrupted* confidence in my integrity, commenced in 1824, were reiterated. Consequently the severe "hurt" which I had on the present occasion received, in his good opinion, must have proved quite a medicable wound, no less transient than severe.

Towards the close of 1830, the Matanzas experiment *having thus far*, — after some twelve or fifteen months trial, — *proved a losing one*, Mr. Tudor insisted that I was concerned in it as owner of two-fifths; whereas I considered that I had no share in it whatever. This was the disagreement. In regard to the nature of the grounds for it, a sufficient idea is afforded by the following particulars:

Mr. Tudor, when the establishment at Matanzas was first determined upon by him, had proposed that it should be a joint concern of ours. I had assented, and expressed my willingness to take an interest of *one-half*. To this *equality* he demurred, and he expressed his willingness to admit me to so near an approximation as two-fifths. Thus the matter stood for some time; when, in 1828, it was resumed in the way shown by the following extracts from my letters:

Aug. 29, 1828. "If you wish that I should go *one-half* with you at Matanzas, as has been heretofore talked of, I am willing; but I would not wish to go anything less than one-half. Please to let me know your mind, on the receipt of this."

Oct. 21, 1828. "I observe what you say in your No. 19. I have heard nothing from Matanzas since I sent a legalized copy," &c. &c. "I recollect perfectly well that you opposed my being half concerned in the Matanzas business, on the ground, if I recollect right, that you would lose the commanding part; but I have *no recollection* of its being *agreed* to either way. I am not disposed at present to disagree respecting Matanzas, even should you refuse to let me participate any in it; neither shall this loosen my exertions to obtain the Privilege there. But I will write more fully on this hereafter."

Nov. 7, 1828. "In your No. 19, you say you had proposed my taking double the interest in the Matanzas concern than I have in Havana, and that you could not consent to any other proportion, &c., that you are giving up an important customer of Havana."

"You would be giving up an important customer of Havana, if no one else would ever take hold of Matanzas," &c. &c. "My object in going equally concerned with you at Matanzas, was, to make money; that is, I thought Matanzas might be profitable, and while I was here, I should have about all my property nearly, under my immediate inspection. But my views are somewhat changed: not that I think Matanzas will be unprofitable, but that I *may change my place of residence* sooner than I was aware of."

This, it is to be borne in mind, was written *before* the Matanzas establishment

I have quoted this to show in what way the news of the displacement of Mr. Limbough was received. With regard to the rest of the letter, — the remarks about my retention of the post, and the Matanzas affair, — I leave it to the reader to advert to the *state of the case* between us at the time it was written, and then to say whether it was, or was not, all a piece of “inexcusable impertinence,” as Mr. Tudor once said of a remark of mine upon an item in one of his accounts. *Under the circumstances* in which this letter was written, could it have been written by any boy twelve years of age, imbued with a becoming sense of what was due to *himself* even?

But what will the reader think when he reads the following :

Nov. 22, 1830. “I hereby forbid you to proceed in the erection of an ice-house for my account in Havana. And it would be with very great satisfaction I should hear, as ‘you have stepped in to prevent a fatal consequence,’ that you would step out of my ice-house in the Plaza San Francisco.

“And as you have turned out, *without authority*, a very excellent man, that you would replace the said man and prepare yourself to answer to me for violations of the most plain contracts.”

This is the entire letter. Suppose the “very excellent man” [It may be well to say that I always bore explicit testimony to his *honesty*, so far as I had means of judging] *had* been turned

was commenced, or any expense incurred there; and my meaning, unless I greatly mistake, is very clear and indubitable. When I said, “I am not disposed at present to *disagree* respecting Matanzas,” I meant, *not* that I consented to be interested in the new establishment on any other footing than that of *equality*, but that I was not disposed, should he persist in his refusal to admit me on that footing, to make this a ground of disagreement or contention. On the contrary, my views having changed, I was perfectly willing, and even glad, *not* to be interested in it.

Between four and five months after, to wit: in March, 1830, the pains I had for a long time been taking, were crowned with success, and I obtained the Privilege for Mr. Tudor, for two years. I made repeated journeys to Matanzas, and prepared every thing for the reception of ice, the first cargo of which arrived in June.

On the 27th July, Mr. Tudor wrote as follows:

“The particular detail of instructions for Matanzas need not at present be gone into. I should prefer, if that should be profitable, to have you receive the avails; as your interest is two fifths in that undertaking, it may be better that you should do every thing relating to it.”

It is here seen, that Mr. Tudor, notwithstanding what had passed between us on the subject, undertakes to *agree* for me that my “interest is two fifths in that undertaking.” In other words, I was to be a partner, whether I would or no; and for such precise share as it pleased him to allot me. He was immediately replied to as follows:

Sept. 3, 1829. “I would wish to decline receiving the avails from Matanzas, if that concern should be profitable; and as you have refused, all along, my being *equally* concerned with you in it, I now inform you that I decline having *any* part in it.”

Such was the nature of the case. The use to which it was ultimately put by Mr. Tudor, in 1831, is seen in §5.

out by *me*, — would this assertion of Mr. Tudor, that he had been turned out “without authority,” have been true, or have had the semblance of a shadow of truth, after I had received his letter of August 26, saying : “As to Mr. Limbough, I know very little about him ; and if he has conducted improperly towards you, I should think him unwise ; because it has always been in your power to displace him *at your pleasure* ?”

Most consistent of all gentlemen, and most accurate withal ! But Mr. L. had not been turned out by *me*. And this Mr. Tudor positively knew. He had been turned out by his attorneys at Havana ; and I had consented temporarily to take the place, solely because Mr. Tudor had seen fit, not only not to send out any one of his fifty-one excellent men, but to restrict the power of appointment, recently given by him to his said attorneys, to my individual self. Most consistent, most accurate, most just, most liberal, most generous of all living gentlemen ! Paragon of partners and of “*patrons*” ! where shall we find your match ?

Thus much of the circumstances relating to my retirement from the post of ice-house keeper, and thus much of the game played by Mr. Tudor, in respect thereto. But the reader will naturally inquire, *what was the cause of this new outbreak* ?

In reply to this question I will state a few facts, respecting Mr. Tudor's pecuniary position at the time, and leave it to the reader to judge, whether, taken in connection with what he has seen of my partner's character, they afford a sufficient explanation of the motives, by which he was in this instance impelled.

It is seen, that he here forbids me “to proceed in the erection of an ice-house.” Now, the course that our affairs had recently taken at Havana, was such as to leave us no option whatever in this respect ; and he had become apprised of my intention to commence operations, the instant a site should be obtained. But why should this put him beside himself ? Because his pecuniary position was such, as to render the bare idea of the *expense* of the new building, absolute “distraction.” The funds yielded by the Havana establishment he *wanted*, and most sorely wanted, for other purposes.

This I state *as a fact*, because here is the proof of it, in another fact, (or, strictly speaking, a string of facts,) which only served to aggravate the inconvenience to him of the impending necessity of applying to the erection of a new house, funds which had been prospectively appropriated, in his mind, to other objects.

Mr. Tudor was my debtor, for money lent and advanced ; and this, in the not insignificant sum of about *six thousand dol-*

lars. (i) Subsequently to writing his letter of October 5, — acknowledging mine of September 2, in reference to which he was graciously pleased to say: "It was pleasing to me again to see your handwriting, reporting sales, &c., as in old times," — he had received another letter from me, under date of September 18th–26th, containing, among other matters, the following:

"If my recollection serves me right, it was understood, when you gave me your notes, that I was to give you notice of a month or two, before I called for their payment; I now give you notice that I shall want them paid in December next, and I have written to Mr. Hobbs to have them ready for that time."

The directions to my friend, here referred to, were as follows:

"I wish you would, on receipt of this, demand the payment of them and interest. Mr. Tudor wrote me, a little less than a year ago, that he would keep that money another year, if I did not want it, at five per cent. I wrote him that I did not want it, and that he could act his pleasure as to paying or keeping it, but that I thought it worth more than five per cent. Some three or four months afterwards, he wrote me that he understood, from the tenor of my letter, that I wished him to keep the money at five per cent., to which he acceded. To this last I made no reply, thinking I should be in Boston soon after. Should he stick at five per cent. for this year, you will let it go at that, but recover six per cent. for the previous time."

So far, my string of facts goes to show, if anything, that Mr. Tudor was rather flush of money, than otherwise. Had this not been the nature of his position the year previous, he could scarcely then have made it an act of friendly condescension and liberality to accommodate me, by retaining for another year, at *five* per cent., money which he had borrowed at *six*. And if this had been the state of the case the year previous, what reason is there for supposing that it had now become reversed? That reason consists in another fact, which I will now state, premising, however, that I do not by any means adduce it, as conclusive proof that Mr. Tudor's position, in 1830, was the reverse of what it had *in truth been* a year before; but simply as proof that it now *was* the reverse of what it might *be supposed* to have been a year previous, judging from his then apparent unwillingness to pay so high an interest as *six* per cent. After all, the truth of the matter might be, that this unwillingness had been

(i) By the settlement (or rather the liquidation) which took place between us, shortly after, the exact amount then due, and acknowledged by him, was \$6,255 71.

but affected, — a mere stratagem, corresponding with other pieces of Mr. Tudor's *diplomacy*. Whether it was so or not, I leave it to those acquainted with the state of his affairs at that period, (fall of 1829,) to pronounce. My remaining fact is, that

Mr. Tudor, although notified as we see he was, and although the demand was made upon him, *was not able to pay me my money*. And this inability existed, not only at that particular time, but for a very considerable time afterwards. When I say *not able*, I do not mean that it was an absolute impossibility to him, (for I do not know that this was the case,) but merely, that it was far more *convenient* to him *not* to pay. So far was this the case, that when, in the month of March following, we made a *final* adjustment, (on the supposition that I was not to resume the post of ice-house keeper,) instead of paying me my \$6,255, which I had repaired to Boston in the expectation of receiving, he gave me an order for the amount on his agents at Havana, *to be paid from the income of the establishment, as this should accrue*.

The reader is now in possession of the facts, from which I proposed he should judge for himself, as to the probable cause of Mr. Tudor's November outbreak. The reader may also conjecture for himself, whether those terrible words, "prepare yourself to answer to me, for violation of the most plain contracts," are indicative of a design, on the part of the writer, to meet my demand for my \$6,255, by a claim for *damages* "for violations of the most plain contracts," by way of what the lawyers call a "set-off."

Immediately on the receipt of Mr. Tudor's letter, I made arrangements for again retiring from the ice-house, and replacing it in the charge of Mr. Limbough; which being done, I departed for Boston.

(F.)

[Referred to in § 4, near the end.]

Extracts from my Letters, showing the extraordinary Non-committal Game played by Mr. Frederic Tudor, in regard to the closing of the Contract for the Renewal of the Privilege; which Game terminated with his Letter of December 10, 1830, announcing that all connection between us had ceased, and that he did "not accept the New Contract."

The reader is aware, that the mission of Mr. Henry Tudor to Havana had resulted in his inducing me to take anew the steps

for obtaining a renewal of the Privilege ; and then departing for Boston, after obtaining from Messrs. Scull, Storey & Co., the promise to attend to his brother's business, and from me the promise to follow it up, during the short time I expected to remain at Havana.

The line of conduct which Mr. Frederic Tudor saw fit to pursue, under these circumstances, towards those gentlemen and myself, is sufficiently shown by the following extracts from my letters :

June 11, 1830. [To Mr. Henry Tudor.] " With my last, of the 27th ulto., I forwarded one of the Diario's, containing the advertisement of the Cabildo, setting forth the new propositions, and calling on any one that might wish to contract at a farther reduced price, to send in their propositions to the Secretary, &c. Since then, I have made it a point to see some one in the office every day or two, but could learn nothing of a certainty until last Saturday, when the Escribiente sent for me, and said he was not knowing to any one having made any proposition, and although the fifteen days would not be out until the Monday following, I had better take the *expediente*, and have another representation made, accompanied by the advertisements, asking for a speedy conclusion of the contract, and hand it into the office on Tuesday. I took the *expediente*, and went and told Mr. Scull what was done, and what was said was to be done.

" Mr. Scull said, *he was very much surprised at not having had by the Alfonso any letters of instructions from you or Mr. Tudor*, and he would call in Mr. Storey, to see if he had any. There was considerable consultation between them. Mr. Scull said he had no power to make the contract, and if he should make it, it would be upon his own responsibility ; nevertheless, have the representation made, and it may be the full powers and instructions will arrive before it becomes necessary to sign the contract. The representation was made, and handed in on Tuesday ; and this afternoon I was in the office and saw that the Cabildo had ordered the Comisario to make out the contract and send it to the Captain General for his approbation, and for him to send to the Intendant for the relinquishment of the duties."

" *If Mr. Scull had received his Power and instructions by the Alfonso, I should probably have left here before now ; but as it is, I shall wait to see something about the contract, or at least until he gets his power.*"

July 2. " In mine of June 11, I informed you that another representation had been made, asking for a speedy conclusion of

the contract, and that the Cabildo had ordered the Comisario to make it, &c. Since then I have frequently been to the Cabildo office, and nearly as often called on the Comisario, who said he would attend to it; and yesterday I was at his house three times before I could find him, when he said he had made a draft of the contract, and wished I would call this morning early and read it over with him to see whether it would be acceptable. When I went to the Commissary's house this morning, I found he had made almost an exact copy of the last contract, putting in even the names of the last securities. Mr. Scull not having seen the last contract, and it being necessary that he should see this, which the Commissary called a draft, I requested permission to take it with me. Mr. Scull says it will do, after having made some little alterations; but that *he cannot think of binding himself to it without first having received instructions and Power of Attorney from Mr Tudor, and still expresses his surprise that none has arrived, nor even a word from Mr. Tudor.*"

July 16. "In my letter of 2nd inst. I informed you that one of the Comisarios had given me what he called a draft of a contract, and that it was almost an exact copy of the last, and that it had been shown to Mr. Scull, &c. When I returned to the Comisario and told him that Mr. Scull said the contract was well, with some few exceptions, and that his House would be surety for the penal part of it, the Comisario said that was all very well, but *that it was necessary for the farther security of the penalty that there should be a mortgage given on real estate.* This not having been hinted at when I took the draft to Mr. Scull, it was necessary to inform him of it, who said he would not mortgage any of his property on any account whatever."

"The brig Commissary arrived on the afternoon of the 14th.; and yesterday Mr. Storey told me they had received your brother's Power of Attorney, with a letter, but *no particular instructions.* I then waited until Mr. Scull came in, and asked him (after having told him as above, what had been done in the Cabildo) *what should be done?* He said he had no particular instructions from your brother, and that he had said in his letter that it *appeared unnecessary to have any penalty affixed to the contract until after the new house should be built, &c.* I believe you are aware that the Comisarios said, before you left here, that they could not do anything about the new house until it should be determined with whom the new contract was made; that it was first suggested by Escovedo, and afterwards ordered by you, to have the sum of four thousand dollars inserted in the representation to be made as a forfeiture for the failure of the

supply of ice. It is now certain they will not close the contract without a mortgage on real estate, and it is possible that something will have to be done about the spot for a new house."

July 31. [To Mr. Frederic Tudor.] "The Comisario said, that we could proceed to conclude the contract, *if there was any place fixed upon where to build the new house*; and the Intendant's oficio would come in in time. Having been positively refused a situation on this square, by the Director of Engineers, I requested the Comisario to hold an interview with the Director, and ask him to point out a spot where we might build, that he would not oppose. To this the Comisario consented, and after a few days, told me that the Director said there was no place within the line of fortifications that he could consent to."

"Mr. Scull tells me that his House have written to you *about instructions, and have recommended your appointing a general agent, &c.*; for he could not think of taking any more upon himself than he had promised your brother."

Aug. 13. "Dr. Escovedo mentioned a hulk for the ice, or the building of a house in some other place that may be convenient for discharging, and to have a retail place in the city; to all of which I objected, either on account of the expense or the loss of ice, when he said some such way *must* be adopted, for there was *no hope* from the Director of Engineers." — "When I was with Mr. D. yesterday, I mentioned the situation by the fish market, when he said he thought it the most likely place to be obtained."

Aug. 18. "Yesterday there was an arrival from New York, and I called at Mr. Scull's house *to see if he had received any letters from you, when I found there were none*. He told me he had got his answer from the Governor, (about permission to build,) saying that he could do nothing with a representation to him, as he should be obliged to take counsel of the Director of Engineers, and as the Director had opposed it so strenuously heretofore, there was no hope of his favoring it now.

"If it were not for the lot for a new house, the contract might as well be concluded to-morrow as next month, everything but the lot being ready; the Intendant having sent in his oficio two days ago, relinquishing the tonnage on ice vessels; and the Cabildo having agreed to take a mortgage on my property as a security for the penalty."

Aug. 26. "I saw Mr. B. this morning, and he told me he had some talk with the Adjutant last evening, who said he would give up his right to the piece of ground near the fish market for fifty dollars per month, or rather he would rent it to

any one to build upon for that sum monthly. Mr. B. thought he might be bought out for about \$2,000, but of this he was not certain."

Sep. 11. "I requested Mr. B., at his next interview with the Adjutant, to ascertain the exact sum the lot could be had for, when he said, it was useless to go into any negotiation *until it was determined on your part* to close the bargain, if it could be had at a fair price. So it stood until I was stopped in the street by the Secretary of the Cabildo, and asked *when the contract could be closed*; for he had been asked by some of the Regidores for the *expediente*, and been told by them that *it could not be kept open as it is a great while longer*. This I told to Messrs. Scull & Storey, who came to the conclusion to make the demand for the lowest price, (to inquire the lowest price at which the lot could be had from the Adjutant,) not, however, until I had again sounded the depth of the water in front of the lot."

Sept. 18. "I saw Mr. Scull yesterday, who told me that Mr. B. had informed him that the Adjutant would dispose of the lot at the fish market for \$3,000, as his lowest price; he (the Adjutant) to obtain the permission for building and discharging over the wall. Mr. Scull advised me to go and measure the lot, and see if it was sufficiently large for the new house; which I have done to-day. I find it measures," &c. &c. "When I was measuring the lot, the Comisario of the Cabildo (of whom I have spoken several times as exerting himself in our behalf) said *we ought to be expeditious and close the contract*; for he should not be able to keep it open much longer. I told him it was likely it might be ready to be closed in a few days."

Oct. 12. "A few days since, I was sent for by Mr. B., when he showed me a rough draft, said it must be dressed by a lawyer or some one acquainted with memorials, and then the Adjutant (Don Francisco Seydell) would present it, and have it carried through the different offices to obtain the permission to build by the fish market. When this is carried through, and the permission obtained, I suppose Mr. Scull will have to pay the money and wait for you to build. Everything else respecting the contract for the ice Privilege remains as it was, waiting for the decision about the lot before they will conclude it." [That is to say, the Authorities would not consent to the execution of the document securing the Privilege to us until we could show that we had obtained a lot upon which to build the house requisite to the fulfilment of the contract.]

Oct. 21. "Your letter per brig Alphonso was received on the 15th. I had thought that you would have written something about the Privilege, and the lot for a new house; but you have

said nothing to me, only that the assistance I have rendered the concern in the security is good, and I am told by Mr. Storey that you have not mentioned anything to him."—"All the agreements, as they stand, are merely verbal; that for the Contract and Privilege not having been carried into effect for want of a lot of land to build upon; that respecting the land, for want of a license to build, and of your consent whether you will have it or not."

Nov. 6. "I have seen Messrs. Scull & Storey several times since the first instant. Mr. Storey says he has *no accounts from you*, only the acknowledgment of the reception of some money. He has *no instructions respecting a lot of land*; and I believe *he hardly knows what to do*, whether to purchase or not the lot that is now in agitation, even if it should be consented to by the Intendant, which appears rather doubtful at present; at any rate, it seems as if there will be a rent placed upon it, in addition to the sum to be paid the Adjutant for his relinquishment."

Nov. 7. "There are *no accounts from you here* since per Dromo, and *no one knows what you intend to do*. If you intended to build this year if the lot was granted, or to purchase a lot in some other place, it would not have been bad to have given orders to buy timber, as this is the time of year when it can be had lower than at any other. The coasters have nothing to do in sugar; they are employed in bringing timber; and by purchasing it from them you get it for half of what you can get it for out of the lumber yards."

Nov. 15. "I have not been able to ascertain anything about the memorial for the lot at the fish market until to-day. This morning Mr. B. gave me a note to the Secretary, for him to deliver to me the memorial with the Governor's decree, which I was not able to get until the afternoon, when I carried it to Mr. B. The decree was very good as far as it went, giving permission to take the lot and build the house; but not to have a crane to hoist the ice. Mr. B. said another memorial must be made, asking for the crane, and I have got the papers drawn up."

Nov. 21. "This morning I was at Mr. B.'s, when he told me that the memorial mentioned in my last had been passed by the Governor to the Intendant, to see if he would consent to the crane for hoisting ice." "If this affair of the lot is not brought to a close soon, it appears to me there will be other difficulties in the way; and it is doubtful whether the Privilege can be obtained. *There have been several vessels from Boston since the Dromo, but no letters from you. I hope you were about sending your brother again to look into affairs here.*"

Dec. 1. "The Privilege is not yet closed, because the busi-

ness of the lot has not been brought to a close; that is, about the crane. If the Intendant should refuse the crane, and it should be thought advisable to take the lot as it is, with the Governor's decree upon the last memorial but one, the contract for the Privilege can be closed, and the ice will have to be got into the house in the best manner it can until," &c. &c. "If the contract is not closed during this month, other Comisarios will be appointed at the commencement of the new year; and it is most likely the work will have to be commenced anew."

Dec. 11. "The Intendant has seen fit to refuse his consent to have a crane built on the wall for the hoisting of ice; and if he cannot be prevailed upon hereafter to give his consent, the ice will have to be brought through the arches in the fish market, which will make it a little more difficult than it would be with the crane.

"Mr. Scull has concluded to have the contract closed before the present Comisarios go out; and steps are taking to that effect, so that in all next week it is likely it will be closed."

Such was the predicament in which it proved to be the sovereign will and pleasure of Mr. Frederick Tudor to leave Messrs. Scull, Storey & Co., and myself, for month after month, as the proper state of preparation for his December announcement that he then saw fit *not* to "accept the contract!"

(G.)

*First Settlement of Accounts between Mr. Tudor and myself.—
A Sample of my Trials, in this respect.*

Early in 1826,—about two years after my partnership with Mr. Tudor had commenced,—I was invited by a friend in Boston to unite some of my funds with his, in an investment contemplated by him. My affairs being in a state enabling me to accept the offer, I was, on every account, glad to do so. In a very short time, however, I was thrown all aback, by the transmission of my partner's accounts; which, *if true*, proved that I had no money at my disposal, but, on the contrary, was still deeply in his debt. The nature of this business, and how it ended, is sufficiently explained by the following extracts from my letters to him:

April 14, 1826. "Your letters and accounts, per Ninus, were received last evening. In reading No. 8, I observed mention made of my note as not being paid; and on reference to your accounts, I found I was indebted to you upwards of \$5,000, at

which I was much surprised, for I had expected that the note was paid, and if anything, a balance in my favor, in your hands. In looking over your account, I find you have omitted the credit of one bill, on William B. Swett & Co., for \$1,000, purchased 29th September, at five per cent. I fear there are other mistakes of equal amount; and there is one small one, where you charge the Havana ice-house with insurance of specie, per Laurel and Alert; the insurance of specie, per Laurel, was charged in your account of 1824.

"I have said, heretofore, there were mistakes in your accounts of 1824, but you never have seen fit to make any reply. I will now point out some of them."

I then wrote to the Boston friend above referred to :

April 24. "When I received your letter of the 16th February, I did not think but I should be able to furnish you with the sum required, neither did I have any doubt of it when I received that of the 17th ulto., until I read Mr. Tudor's, and looked at his accounts, forwarded at the same time; when, to my great surprise, I found I was owing him upwards of five thousand dollars. It is what I had never thought; to the contrary, I supposed he was owing me. I think I can see some errors in his accounts; and I hope he will find them also,—at least enough of them to wear off the sum he has charged to me. It is likely I shall be able to send you some; but I want to hear from Mr. Tudor, in answer to one of my letters of the 14th instant, in which I have intimated to him his mistake."

May 26. [To Mr. Tudor.] "I have looked over our accounts, from 1st January, 1824, to 15th September, 1825, and I find there was a balance in my favor in your hands, of upwards of \$400."

"I cannot think you have had anything to do in making out these accounts; there is too much irregularity in them, to bear your stamp. I have cast the interest of several of the sums, and I find but few of them correct."

June 10. [To my friend.] "I enclose you a bill of exchange for \$1,500. I would have sent it sooner, but for the disagreement of accounts between Mr. Tudor and me; but I find there is no way of getting Mr. Tudor to re-examine his accounts, and so I take this to myself."

"If Mr. Tudor looks to his accounts himself, I can hardly see how he can be so much out of the way; and if he does not, he must have bad advice."

"For 1824 and 1825, he has received," &c., &c. "And yet he brings me in debt \$5,000! And when written to on the

subject, tells me to follow his orders, make remittances, and not pay any regard to my accounts!" (a)

September 21. [To Mr. Tudor.] "I observe what you say about Mr. —, and my return to Boston about Christmas." "I cannot think of making another winter passage to Boston; for I suffered so severely in the last, that it is still fresh in my mind. It appears to me, that our accounts can be settled as well where we are, as if we were both in one room. I hope to see your accounts stated, in the manner you wrote me some time since."

November 8. "You still urge my return to Boston this winter. Unless it is for something of much greater consequence than to settle our accounts, I would not wish to run the risk of going into cold weather, so sudden as it would be to leave here about Christmas for Boston. My health is not very sound now; or rather, my constitution is not so strong as it was."

"I have examined my books and can find nothing that alters my accounts in any way materially from those already forwarded."

Nov. 22. "Your No. 32, was received last evening, together with a letter from Mr. Pratt covering a statement of accounts for 1824 and 25, and accompanied with remarks.

(a) In one of my partner's letters, received the day before, he had said:

May 20, 1826. "I hope you will not give me occasion to complain of money lying unremitted, for any reason which you have given relative to accounts. If it should so happen, that more moneys come into my hands than should come, the moment it becomes effective an interest account is kept, and you derive your part of the advantage; and surely money in this country at six per cent. is far safer than money in Havana at twelve."

What Boston merchant can be found to resist the force of this logic? Was ever reasoning more conclusive and *satisfactory* — to those who do not much mind if it so happen that more moneys *do* come into their hands than *should* come into their hands?

Of course, I had to go on remitting;—for, "poor miserable carpenter," as I was, I could not be absolutely certain that the error did not lay in my accounts, instead of those of my "munificent patron," or his book-keeper's. The result of the matter was, that at the close of the year 1826, he was in my debt to the amount of \$5,980 00; which, by the close of 1827, had swelled to \$6,840 81.

But what of that! Was not money, at six per cent., in Boston, *safer* than at twelve at Havana? And in Boston town, in whose hands could my money be so safe or so profitable, as in those of my patron?

This large balance in his hands, having been brought about solely by *over-remittances*, *extorted* from me, in the way that has been seen, the very least he could, in common justice do, was, when our accounts finally came to be adjusted, to give me credit for the *amounts invested* in the bills so remitted by me, as so much money paid to him, or for him, *at Havana*. Instead of this, the amounts were credited to me, and interest upon them allowed, only from the time the several bills came to maturity, and were paid to him at Boston! And, to the loss of *interest* thus thrown upon me, was added the amount of *premiums* paid by me, in the purchase of those bills; that also,—with an inconsiderable deduction,—was made *my loss*. All this, however, was a mere trifle, compared with the loss which would have attended these extorted remittances, had the larger bills proved *equally* unfortunate with the \$400 one.

"I am pleased with this statement, in a great measure; for it reduces the balance due to you, from \$5,000 and odd, to \$300; yet I consider it incorrect.

"Mr. P——, in his letter, says I have mentioned mistakes in casting interest on cash received by you, and requests me to point them out. I did not say there were mistakes in casting interest on cash received by you, but that there were mistakes in casting interest *on several sums*; neither was that intended to convey an idea that the amount of interest would change materially the face of the accounts; (as some were too large, and I believe others too small,) but as there were mistakes in one part, it was possible there were others in another part, and the present statement proves there were; and *yet* the present statement is incorrect."

"I do not profess to be well skilled in the science of accounts, neither have I consulted with any that does; but it appears to me that we must, to have our accounts adjusted in a clear and correct manner, make them out separate. It is my opinion that your account with Havana ice-house should," &c. &c.

"I will write Mr. — to adjust the Smith affair (*b*) with you; or you may put it to account of the concern; more than this, I cannot feel myself justified in doing at this time."

Dec. 16. [To my friend.] "When I bought into this establishment, I paid Mr. Tudor \$2000, and gave him my note on demand for \$4000 more, bearing interest. It was understood that my payments should be made in Boston; consequently all the products of the establishment, except its disbursements and my personal expenses, were forwarded to Mr. Tudor, as fast as they occurred and opportunities offered. Some time in the summer of 1825, Mr. Tudor wrote me, stating that, by an estimate of his, my note would be paid in when all the bills should be cashed that he had received. According to an estimate of mine in Sept. 1825, I concluded there was a balance in my favor in Mr. Tudor's hands, and that together with what I then had, the amount would be about Mr. Tudor's share for the year; leaving for me and the expenses of the establishment, what I should receive from then to the close of the year. At that time bills were selling at five per cent. advance, which was higher than I liked to pay on *my* account; and being urged by Mr. Tudor to remit *his* money as soon as I could, I then concluded to remit all the money there was in my possession, *on Mr. Tudor's account*, and take mine out of what I should receive, and keep it on hand until bills should fall, the fall of which I concluded would be more than I could obtain at interest providing it could be em-

(*b*) This is the bill of exchange for \$400, mentioned in Appendix (D).

ployed. One of the bills remitted at that time unfortunately has never been paid, and Mr. Tudor says I ought to lose it, if it is finally lost.

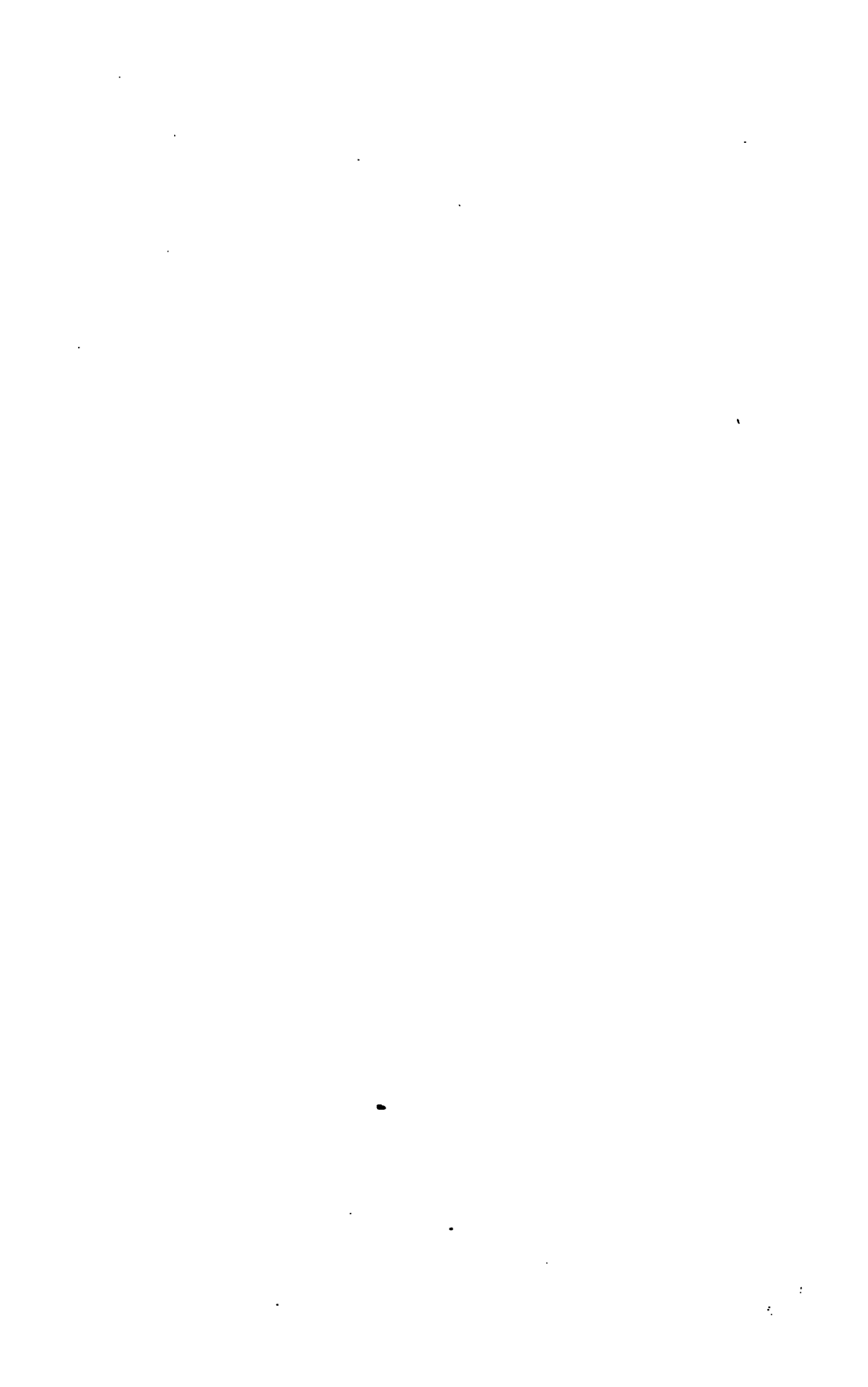
"This I dispute with him, as being unfair, and this is what you are requested to settle with him. In one of my late letters I have told him, the most I could do was, to throw the bills into the concern and make it a general loss. Why should I be responsible for remitting money? One or two such cases would ruin me. I will further request you, if convenient, to look over Mr. Tudor's accounts with me, if he has not corrected them himself. There are some great mistakes or errors in them. In his accounts at the close of 1825, he brought me in debt \$5152.96 $\frac{1}{2}$; and after much ado on my part, I received a few weeks since, what Mr. Pratt calls a statement of accounts; and there, my debt was mollified down to \$322.97 $\frac{1}{2}$; there are errors still."

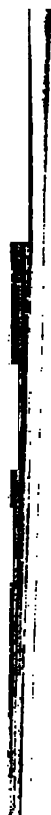
Dec. 31. [To Mr. Tudor.] "I do not see why we cannot settle and balance our accounts where we are, as well as other people can settle their accounts in different countries. To the form of Mr. Pratt's last statement, I do not particularly object; yet, I think there is some that ought to be taken off, such as the Smith bill," &c.

Jan. 31, 1827. "If you will order the accounts to be made out anew from the beginning, and correct the mistakes where they have been found to occur, I have no doubt but they will be satisfactory."

ERRATUM.—Page 74, note z, for "see a subsequent note (o)," read — see a preceding note, (o).









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